(24,331)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 219.

J. C. HAWKINS, APPELLANT,

vs.

JOHN L. BLEAKLY, AUDITOR OF THE STATE OF IOWA, AND WARREN GARST, IOWA INDUSTRIAL COMMISSIONER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5, 1915.

a Pleas and Proceedings before Honorable Smith McPherson, Judge of the District Court of the United States for the Southern District of Iowa, in a certain cause lately pending in said Court wherein J. C. Hawkins was Complainant and John L. Bleakly, Auditor of the State of Iowa and Warren Garst, Iowa Industrial Commissioner, were defendants, being numbered 12-A Equity, Central Division.

Appearances:

Ryan & Ryan, Des Moines, Iowa,
James P. Hewitt, Des Moines, Iowa,
Attorneys for Complainant.
George Cosson, Attorney General, Des Doines, Iowa,
H. E. Sampson, Assistant Attorney General, Des Moines, Iowa,
John T. Clarkson, Albia, Iowa,
Attorneys for Defendants.

WM. C. McARTHUR,
Clerk, P. O. Des Moines, Iowa.

1 *Citation.*

UNITED STATES OF AMERICA:

To John L. Bleakly, Auditor of the State of Iowa, and Warren Garst, Iowa Industrial Commissioner, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington in the District of Columbia, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the Southern District of Iowa, Central Division, wherein J. C. Hawkins is Appellant and you are Appellees to show cause, if any there be, why the Decree rendered against the said Appellant as in said Appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Smith McPherson, sole Judge of the District Court of the United States for the Southern District of Iowa this 17 day of July A. D. 1914.

SMITH McPHERSON,
Judge United States District Court,
Southern District of Iowa.

Due and legal service of the above citation together with the receipt of a copy thereof is hereby acknowledged at the City of Des Moines in said District this 20 day of July A. D. 1914.

GEORGE COSSON,
Solicitor for Appellees.

Filed July 20/14.
W. C. McARTHUR, *Clerk.*

2 Be it remembered that at a stated term of the District Court of the United States for the Southern District of Iowa, Central Division, began and holden in the City of Des Moines, Iowa, on the 13th day of May A. D. 1913 there was filed on the August 29th 1913 day of said term a bill of complaint by J. C. Hawkins against John L. Bleakly, Auditor of the State of Iowa and Warren Garst, Iowa Industrial Commissioner, which said bill of complaint is in words and figures following to-wit:

3 In the District Court of the United States for the Southern District of Iowa, Central Division, at Des Moines, Iowa.

In Equity.

J. C. HAWKINS, Plaintiff,
vs.
JOHN L. BLEAKLY, Auditor of the State of Iowa, and WARREN GARST, Iowa Industrial Commissioner, Defendants.

Bill of Complaint.

To the Honorable Smith McPherson, Judge of said District Court:

J. C. Hawkins a resident of Newton and a resident and citizen of Iowa, brings this bill of complaint against the above named defendants; that is to say against John L. Bleakly, who is Auditor of the state of Iowa and against Warren Garst, who is Industrial Commissioner of Iowa.

And thereupon your orator complains for himself and all others similarly situated who will join with him in his complaint and says that in this action there is involved, exclusive of interest and costs, more than three thousand dollars, that your orator is a taxpayer of the state of Iowa and is an employer of laborers for hire
4 to the number of five persons not one of whom is a household or domestic servant, farm or other laborer engaged in agricultural pursuits nor whose employment is of a casual nature. Your orator alleges that your orator is engaged in the manufacture of an article of office furniture of great utility known as "The Clipless Paper Fastener" and that the duties of said five employes of your orator are to advertise, market and distribute said Clipless Paper Fastener to all parts of the world including such distant countries as China and Japan; that these employes have been in your orator's employ from a time previous to the enactment of the "Employers' Liability or Workmen's Compensation Law" hereinafter referred to and more particularly described, under contracts by virtue of which your orator, for injuries which may be sustained by any of said employes, shall be liable only to the extent and under judicial proceedings according to the course of the common law and that neither of said employes nor your petitioner has consented or will consent, voluntarily, to vary the conditions of, or his rights under said contract of employment.

Your orator further alleges that on April 18th, 1913, there was approved an act known as chapter 147 of the Acts of the Thirty Fifth General Assembly of Iowa, a copy of which act is hereto attached and herewith submitted as an Exhibit designated, "Employers' Liability or Workmen's Compensation Law," which hereinafter will be referred to simply as the "act." Your orator says that as a taxpayer of the state of Iowa your orator is injuriously affected by the present payment of expenses to put into effect the provisions of said act, towit the sum of $3,000 per annum provided by the act to be paid to Warren Garst as industrial commissioner and $1,500 to be paid to a secretary provided for by said act and by the appropriation by said act of the sum of twenty thousand dollars to pay said salaries and other incidental expenses, all of which are now being incurred by said Garst to put into effect and
5 enforce the provisions of said act. That the auditor named as defendant unless restrained will accordingly issue his warrants of the state treasurer for the payment of sums amounting to $20,000.

Your orator further says your orator has never consented to become subject, as an employer, to any of the provisions of said act, but that he has at all times and now continues as he will in the future, to reject unconditionally and absolutely the obligations, liabilities and provisions of said act.

Your orator shows to this Honorable Court that the compulsory enforcement of the provisions of said act deprives your orator without his consent of an election to insure or not insure his employees against injury or pay the same where he may be liable without compulsion—said provision of the act as to insurance being already in effect, and compulsory compliance therewith by your orator resting entirely in the discretion of Warren Garst, the industrial commissioner provided for in said act.

Your orator further shows to this Honorable Court that under the conditions above described the said act, does, and in the future will, deprive your orator of the right of trial by jury and of judicial proceedings according to the course of the common law and will deprive your orator of his property otherwise than by the judgment of your orator's peers and by the law of the land and said act abridges the privileges and immunities of your orator as a citizen of the United States and deprives him of his property and rights without due process of law and denies to your orator within the jurisdiction of this court *of* equal protection of the laws and impairs the obligations of the contracts of your orator above referred to. And your orator further shows that said act denies to your orator the right to undertake to effect a settlement with any of his employes with respect to injuries which they may sustain while in the employ of your orator and upon such attempt, no matter how fairly made, the said act raises a presumption of fraud against your orator and raises a
6 like presumption as to any settlement which may be effected within 12 days after an injury may be sustained.

Your orator further shows to this Honorable Court that by the provisions of said act your orator's employes have the option to reject the provisions of said act unaffected by any election your orator may

make but that nevertheless your orator as an employer is held subject to said provisions and may not relieve himself therefrom except by expressly in writing waiving all his rights to interpose defenses. Your orator alleges that the provisions of the act which provide that certain of its provisions shall become law at the election of the employe impairs the validity of said provisions for the reason that no law is valid which depends upon approval of persons thereby affected.

Your orator says the exemption from the operation of the act of household and domestic servants, farm or other laborers engaged in agricultural pursuits and persons whose employment is of a casual nature is in violation of article 1, section 6 of the Constitution of Iowa, which section is as follows: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

Wherefore your orator prays that a temporary injunction issue and that upon the final hearing a permanent injunction be decreed (answer hereto under oath being expressly waived), restraining each of defendants from taking any steps or doing any act to put into effect any provisions of said act and for such other relief as shall be just and equitable.

RYAN & RYAN AND
JAMES P. HEWITT,
Solicitors for Complainant.

7 STATE OF IOWA,
Jasper County, ss:

I, J. C. Hawkins being first duly sworn, on oath state that I am the complainant in the foregoing action; that I have read over the foregoing petition and that each and every statement therein contained is true.

J. C. HAWKINS.

Subscribed and sworn to by J. C. Hawkins before me and in my presence this 28th day of August, A. D., 1913.

[NOTARIAL SEAL.]

E. C. OGG,
Notary Public in and for Jasper County, Iowa.

Endorsed: "Filed August 29th, 1913. Wm. C. McArthur, Clerk."

8 *Employers' Liability or Workmen's Compensation Law.*

Enacted by the Thirty-fifth General Assembly, Year 1913.

Endorsed: Exhibit Filed August 29th 1913. W. C. McArthur, Clerk.

Senate File No. 3.

8a Employers' Liability or Workmen's Compensation Law.

Enacted by the Thirty-fifth General Assembly, Year 1913.

Senate File No. 3.

An Act relating to employers' liability for personal injury sustained by employees in line of duty, fixing compensation therefor, securing the payment thereof, providing for the appointment of a commissioner and defining his duties.

Be it Enacted by the General Assembly of the State of Iowa:

SECTION 1. (*a*) Except as by this act otherwise provided, it shall be conclusively presumed that every employer as defined by this act has elected to provide, secure and pay compensation according to the terms, conditions, and provisions of this act for any and all personal injuries sustained by an employee arising out of and in the course of the employment; and in such cases the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury, unless by the terms of this act otherwise provided; but this act shall not apply to any household or domestic servant, farm or other laborer engaged in agricultural pursuits, nor persons whose employment is of a casual nature.

8b (*b*) Where the state, county, municipal corporation, school district, cities under special charter and commission form of government is the employer, the terms, conditions and provisions of this act for the payment of compensation and amount thereof for such injury sustained by an employee of such employer shall be exclusive, compulsory and obligatory upon both employer and employee.

(*c*) An employer having the right under the provisions of this act to elect to reject the terms, conditions and provisions thereof and in such case exercises the right in the manner and form by this act provided, such employer shall not escape liability for personal injury sustained by an employe of such employer when the injury sustained arises out of and in the usual course of the employment because:

(1) The employe assumed the risks inherent in or incidental to or arising out of his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercised reasonable care in selecting reasonably competent employes in the business:

(2) That the injury was caused by the negligence of the co-employe.

(3) That the employe was negligent unless and except it shall appear that such negligence was willful and with intent to cause the injury; or the result of intoxication on the part of the injured party.

(4) In actions by an employe against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this act, it shall be presumed that the injury to the employe was the direct result and growing out of the negligence of the employer; and that such negligence was a proximate cause of the injury; and in such cases the burden of proof shall rest upon the employer to rebut the presumption of negligence.

8c Every such employer shall be conclusively presumed to have elected to provide, secure and pay compensation to employes for injuries sustained arising out of and in the course of the employment according to the provisions of this act, unless and until notice in writing of an election to the contrary shall have been given to the employes by posting the same in some conspicuous place at the place where the business is carried on, and also by filing notice with the Iowa industrial commissioner with return thereon by affidavit showing the date that notice was posted as by this act provided. Provided, however, that any employer beginning business after the taking effect of this act and giving notice at once of his desire not to come under the provisions of this act, shall not be considered as under the act. Provided, however, that such employer shall not be relieved of the payment of compensation as by this act provided until thirty days after the filing of such notice with the Iowa industrial commissioner, which notice shall be substantially in the following form:

Employers' Notice to Reject.

To the employes of the undersigned and the Iowa Industrial Commissioner:

You and each of you are hereby notified that the undersigned rejects the terms, conditions and provisions to provide, secure and pay compensation to employes of the undersigned for injuries received as provided in the acts of the (35th) general assembly known as chapter (147) and elects to pay damages for personal injuries received by such employe under the common law and statutes of this state modified by sub-divisions one, two, three and four of section one, chapter (147) of the acts of the (35th) general assembly and acts amendatory thereto.

Signed

—— ——.

STATE OF IOWA,
—— *County, ss:*

8d The undersigned being first duly sworn deposes and says that a true, correct and verbatim copy of the foregoing notice was on the — day of ——, 19— posted at ——. (State fully place where posted.)

—— ——.

Subscribed and sworn to before me by —— —— this — day of —— 19—.

—— ——,
Notary Public.

The employer shall keep such notice posted in some conspicuous place which shall apply to the employes subsequently employed by the employer with the same force and effect and to the same extent and in like manner as employes in the employ at the time the notice was given.

Where the employer and employe have not given notice of an election to reject the terms of this act, every contract of hire express or implied, shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure and pay, and on the part of the employee to accept compensation in the manner as by this act provided for all personal injuries sustained arising out of and in the course of the employment.

SEC. 2. No compensation under this act shall be allowed for an injury caused:

(*a*) By the employe's willful intention to injure himself or to willfully injure another; nor shall compensation be paid to an injured employe if injury is sustained where intoxication of the employee was the proximate cause of the injury.

SEC. 3. (*a*) The rights and remedies provided in this act for an employe on account of an injury shall be exclusive of all other rights and remedies of such employe, his personal or legal representatives, dependents or next of kin, at common law or otherwise on account of such injury; and all employes affected by this act shall be conclusively presumed to have elected to take compensation in
8*e* accordance with the terms, conditions and provisions of this act until notice in writing shall have been served upon his employer; and also on the Iowa industrial commissioner, with return thereon by affidavit showing the date upon which notice was served upon the employer.

(*b*) In the event such employe elects to reject the terms, conditions and provisions of this act, the rights and remedies thereof shall not apply where an employe brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this act; and in such actions where the employe has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow-servant shall apply and be available to the employer as by statute authorized unless otherwise provided in this act. Provided, however, that if an employe sustains an injury as the result of the employer's failure to furnish or failure to exercise reasonable care to keep or maintain any safety device required by statute or rule, or violation of any of the statutory provisions or rules and regulations now or hereafter

in force relating to safety of employes, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employe shall be substantially in the following form:

Employes' Notice to Reject.

To..... and the Iowa Industrial Commissioner:
(name of employer)

You and each of you are hereby notified that the undersigned hereby elects to reject the terms, conditions and provisions of an act for the payment of compensation as provided by the acts of the (35th) general assembly and acts amendatory thereto, and elects to rely upon the common law as modified by section 8*f* three of the acts of the (35th) general assembly for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this — day of ——, 19—.

——— ———.
(Signed)

STATE OF IOWA,
— *County, ss:*

The undersigned being first duly sworn deposes and says that the written notice was on the — day of ——, 19—, served on the within named employer of the undersigned by delivering to ——— ——— a true, correct and verbatim copy thereof.

(name of person served.)

——— ———.

Subscribed and sworn (or affirmed) to before me by the said ——— ———, this day of ——, 19—.

——— ———,
Notary Public.

In any case where an employee or one who is an applicant for employment elects to reject the terms, conditions, and provisions of this act, he shall, in addition to the notice required by subdivision (*b*) of section 3 of this act, state in an affidavit to be filed with said notice who, if any, person, requested, suggested, or demands of such person to exercise the right to reject the provisions of this act. And if request, suggestion, or demand has been made of such employee by any person, such employee shall give and state the name of the person who made the request, suggestion, or demand, and all of the circumstances relating thereto, the date and place when and where made, and persons present, and if it be found that the employer of such employee, or an employer to whom an applicant for employment, or any person a member of the firm, association, corporation, or agent or official of such employer, made

a request, suggestion, or demand of such employee or applicant for employment to reject the terms, conditions and pro-
8g visions of this act, such request suggestion, or demand if made under such conditions, shall be conclusively presumed to have been sufficient to have unduly influenced such employee or an applicant for employment to exercise the right to reject the terms of this act, and the rejection made under such circumstances shall be conclusively presumed to have been procured through fraud and thereby fraudulently procured, and such rejection shall be null and void and of no effect.

No person interested in the business of such employer, financially or otherwise, shall be permitted to administer the oath to the affidavit required in case an employee or applicant for employment elects to exercise the right to reject the provisions of this act. And the person administering such oath in making such affidavit, shall carefully read the notice and affidavit to such person making such rejection, and shall explain that the purpose of the notice is to bar such person from recovering compensation in accordance with the schedule and terms of this act in the event that he sustains an injury in the course of such employment. All of which shall be shown by certificate of the person administering the oath herein contemplated. The Iowa industrial commissioner, or any person acting for such commissioner, shall refuse to file the notice and affidavit, unless such notice, affidavit and certificate fully, and in detail, comply with the requirements hereof. And if such rejection, affidavit and certificate is found insufficient for any cause, shall be returned by mail or otherwise to the person who executed the instrument.

SEC. 4. (*a*) When the employer or employee has given notice in compliance with this act electing to reject the terms thereof such election shall continue and be in force until such employer or employee shall thereafter elect to come under the provisions of this act as is provided in sub-division (*b*) of this section.

(*b*) When an employer or employe rejects the terms, conditions or provisions of this act, such party may at any time thereafter elect to waive the same by giving notice in writing in the
8h same manner required of the party in electing to reject the provisions of the act and which shall become effective when filed with the Iowa industrial commissioner.

SEC. 5. Where the employer and employe elect to reject the terms, conditions and provisions of this act, the liability of the employer shall be the same as though the employe had not rejected the terms, conditions and provisions thereof.

SEC. 6. An employer having come under this act, who thereafter elects to reject the terms, conditions and provisions thereof, shall not be relieved from the payment of compensation to such employe who sustains an injury in the course of the employment before the election to reject becomes effective; and in such cases the employer shall be required to secure the payment of any compensation due or that may become due to such workman, subject to the approval of the Iowa industrial commissioner.

SEC. 7. Where an employe coming under the provisions of this act receives an injury for which compensation is payable under this act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof.

(*a*) The employe or beneficiary may take proceedings both against that person to recover damages and against the employer for compensation, but the amount of the compensation to which he is entitled under this act shall be reduced by the amount of damages recovered.

(*b*) If the employe or beneficiary in such case recovers compensation under this act, the employer by whom the compensation was paid or the party who has been called upon to pay the compensation, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employe to recover therefor.

SEC. 8. No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided.

8*i* SEC. 9. Unless the employer or representative of such employer shall have actual knowledge of the occurrence of an injury, or unless the employe or some one on his behalf, or some of the dependents or some one on their behalf, shall give notice thereof to the employer within fifteen days of the occurrence of the injury, then no compensation shall be paid until and from the date such notice is given or knowledge obtained; but if notice is given or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. Provided, that, if the employe or beneficiary shall show that his failure to give prior notice was due to mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another or to any other reasonable cause or excuse, then compensation may be allowed, unless and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Provided, further, unless knowledge is obtained or notice given within ninety days after the occurrence of the injury, no compensation shall be allowed. No form of notice shall be required but may substantially conform to the following form:

Form of Notice.

To —— ——:

You are hereby notified that on or about the — day of ——, 19—, personal injury was sustained by —— —— while in your employ at — (Give name of place employed and point where located when injury occurred and that compensation will be claimed therefor).

(Signed) —— ——.

But no variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employe, by name, received an injury in the course of his employment
8j on or about a specified time at or near a certain place. Notice served upon one upon whom an original notice may be served in civil cases shall be a compliance with this act.

The notice required to be given to the employer may be served by any person over sixteen years of age, who shall make return upon a copy of the notice, properly sworn to, showing the date of service where and upon whom served, but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time.

SEC. 10. If any employe has not given notice to reject the terms, conditions and provisions of this act, or has given such notice and waived the same as by this act provided, and the employer has not rejected the terms, conditions and provisions of the act or has given such notice and waived the same and the employe receives a personal injury arising out of and in the course of the employment, compensation shall be paid as herein provided.

(*a*) The compensation provided for in this act shall be paid in accordance with the schedule unless otherwise provided.

(*b*) At any time after an injury and until the expiration of two weeks of incapacity, the employer, if so requested by the workman, or any one for him, or if so ordered by the court or Iowa industrial commissioner, shall furnish reasonable surgical, medical and hospital services and supplies, not exceeding one hundred ($100.00) dollars.

(*c*) Where the injury causes death the compensation under this act shall be as follows:

The employer shall in addition to any other compensation pay the reasonable expense of the employe's last sickness and burial not to exceed one hundred ($100.00) dollars. If the employe leaves no dependents this shall be the only compensation.

(*d*) If death results from the injury, the employer shall
8k pay the dependents of the employe wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to fifty (50%) per cent of his average weekly wages, but not more than ten ($10.00) dollars nor less than five ($5.00) dollars per week for a period of three hundred (300) weeks.

(*e*) If the employe leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employe to such partial dependents bear to the annual earnings of the deceased at the time of the injury. When weekly payments have been made to an injured employe before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred (300) weeks from the date of the injury.

(*f*) Where injury causes death to an employe, a minor, whose earnings were received by the parent, the compensation to be paid the parent shall be two-thirds (⅔) of the amount provided for payment in sub-division "D" section "10."

(*g*) No compensation shall be paid for an injury which does not incapacitate the employe for a period of at least two weeks from earning full wages; but if incapacity extends beyond a period of two weeks, compensation shall begin on the fifteenth day after the injury.

(*h*) For injury producing temporary disability, fifty (50%) per cent of the average weekly wages received at the time of injury, subject to a maximum compensation of ten ($10.00) dollars and a minimum of five ($5.00) dollars per week; provided, that if at the time of injury the employee receives wages less than five ($5.00) dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred (300) weeks.

(*i*) For disability total in character and permanent in quality fifty (50%) per cent of the average weekly wages received at
8*l* the time of the injury, subject to a maximum compensation of ten ($10.00) dollars per week, and a minimum of five ($5.00) dollars per week; provided, that if at the time of injury, the employee receives wages less than five ($5.00) dollars per week, then he shall receive the full amount of wages per week.

This compensation shall be paid during the period of such disability, not however, beyond four hundred (400) weeks.

(*j*) For disability partial in character and permanent in quality the compensation shall be based upon the extent of such disability.

For all cases included in the following schedule compensation shall be paid as follows, to-wit:

(1) For the loss of a thumb fifty per cent (50%) of daily wages during forty weeks.

(2) For the loss of a first finger, commonly called the index finger, fifty per cent (50%) of daily wages during thirty (30) weeks.

(3) For the loss of a second finger, fifty per cent (50%) of daily wages during twenty-five (25) weeks.

(4) For the loss of a third finger, fifty per cent (50%) of daily wages during twenty (20) weeks.

(5) For the loss of a fourth finger, commonly called the little finger, fifty per cent (50%) of daily wages for fifteen (15) weeks.

(6) For the loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be one-half of the amounts above specified.

(7) The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(8) For the loss of a great toe, fifty per cent (50%) of daily wages during twenty-five (25) weeks.

8*m* (9) For the loss of one of the toes other than the great toe, fifty (50%) per cent of daily wages during fifteen (15) weeks.

(10) For the loss of the first phalange of any toe, shall be considered to be equal to the loss of one-half of such toe and the compensation shall be one-half of the amount above specified.

(11) The loss of more than one phalange shall be considered as the loss of the entire toe.

(12) For the loss of a hand fifty per cent (50%) of daily wages during one hundred fifty (150) weeks.

(13) For the loss of an arm fifty per cent (50%) of daily wages during two hundred (200) weeks.

(14) For the loss of a foot fifty per cent (50%) of daily wages during one hundred twenty-five (125) weeks.

(15) For the loss of a leg, fifty per cent (50%) of daily wages during one hundred seventy-five (175) weeks.

(16) For the loss of an eye, fifty per cent (50%) of daily wages during one hundred (100) weeks.

(17) For the loss of both arms, or both hands, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability to be compensated according to provisions of clause "I" section ten, part one hereof.

(18) In all other cases in this, clause "J", the compensation shall bear such relation to the amount stated in the above schedule as the disability bears to those produced by the injuries named in the schedule. Should the employe and employer be unable to agree upon the amount of compensation to be paid in cases not specifically covered by the schedule, the amount of compensation shall be settled according to provisions of this act as in other cases of disagreement.

(19) The amounts specified in this, clause "J" and sub-divisions thereof shall be subject to the same limitations as to maximum and minimum weekly payments as are stated in clause "H" section ten hereof.

8n SEC. 11. Where an employe is entitled to compensation under this act for an injury received and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

SEC. 12. After an injury the employe, if so requested by his employer, shall submit himself for examination at some reasonable time and place within the state and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state without cost to the employe; but if the employe requests he shall, at his own cost, be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employe to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension.

SEC. 13. The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employes in his employment subject to the

provisions of this act, and it shall not be in any wise reduced by contribution from employes.

SEC. 14. Where a minor dependent or one physically or mentally incapacitated from earning is entitled to compensation under this act, payment shall be made to a trustee appointed by the judge of the district court for each county in the respective judicial districts, and the money coming into the hands of the said trustee shall be expended for the use and benefit of the person entitled thereto under the direction and orders of the judge during term time or in vacation. The trustee shall make annual reports to the court of all money or property received and expended for each person, and for services rendered as trustee shall be paid such compensation by the county as the court may direct by written order directed to the auditor of the county who shall issue a warrant therefor upon the treasurer of the county in which the appointment is made. If the judge making the appointment deems it advisable, a trustee may be appointed to serve for more than one county in the district and the expenses shall be paid ratably by each county according to the amount of work performed in each county. The trustee shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best.

SEC. 15. In any case where the period of compensation can be determined definitely either party may, upon due notice to the other, apply to any judge of the district court for the county in which the accident occurred for an order commuting future payments to a lump sum. And such judge may make such an order when it shall be shown to his satisfaction that the payment of a lump sum in lieu of future monthly or weekly payments, as the case may be, will be for the best interest of the person or persons receiving or dependent upon said compensation, or that the continuance of periodical payments will as compared with lump sum payments entail undue expense or undue hardship upon the employer liable therefor. Where the commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at 5 per cent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, for which said compensation was being paid, and be entitled to a duly executed release, upon filing which the liability of such employer under any agreement, award, finding or judgment shall be discharged of record.

SEC. 16. The basis for computing compensation provided for in this act shall be as follows:

(*a*) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages or earnings in the employment of the same employer during the year next preceding the injury.

(*b*) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employe was employed at the time of the accident, un-

interrupted by absence from work due to illness or any other unavoidable cause.

(*c*) The annual earnings, if not otherwise determinable, shall be regarded as three hundred (300) times the average daily earnings in such computation.

(*d*) If the injured person has not been engaged in the employment for a full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same or in neighboring employments of the same kind have earned during such period. And if this basis of computation is impossible, or should appear to be unreasonable, three hundred (300) times the amount which the injured person earned on an average of those days when he was working during the year next preceding the accident, shall be used as a basis for the computation.

(*e*) In case of injured employes who earn either no wages or less than three hundred (300) times the usual daily wage or earnings of the adult day laborer in the same line of industry of that locality the yearly wage shall be reckoned as three hundred (300) times the average daily local wages of the average wage earner in that particular kind or class of work; or if information of that class is not obtainable, then of the class or kindred or similarity in the same general employment in the same neighborhood.

(*f*) As to employes in employment in which it is the custom to operate for a part of the whole number of working days in each year, such number shall be used instead of three hundred (300) as a basis for computing the annual earnings, provided, the minimum number of days which shall be used for the basis of the year's work shall not be less than two hundred (200).

(*g*) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as
8*q* a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employe to cover any special expense entailed on him by the nature of his employment.

(*h*) In computing the compensation to be paid to any employe who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

SEC. 17. In this act unless the context otherwise requires:

(*a*) "Employer" includes and applies to any person, firm, association or corporation, and includes state, counties, municipal corporations, cities under special charter and under commission form of government and shall include school districts and the legal representatives of a deceased employer. Whenever necessary to give effect to section seven of this act, it includes a principal or intermediate contractor.

(*b*) "Workman" is used synonymous with "employe" and means

any person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship for an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business or those engaged in clerical work only, but clerical work shall not include one who may be subjected to the hazards of the business or one holding an official position or standing in a representative capacity of the employer, or an official elected or appointed by the state, county, school district, municipal corporation, cities under special charter and commission form of government. Provided, that one who sustains the relation of contractor with any person, firm, association, corporation or the state, county, school district, municipal corporation, cities under special charter or commission form of government, shall not be considered an employe thereof.

8r The term "workman" shall include the singular and plural of both sexes. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, legal representatives or where the workman is a minor or incompetent to his guardian or next friend.

(c) The following shall be conclusively presumed to be wholly dependent upon a deceased employe:

(1) The surviving spouse, unless it be shown that the survivor wilfully deserted deceased without fault upon the part of the deceased, and if it be shown that the survivor deserted deceased without fault upon the part of the deceased, the survivor shall not be regarded as a dependent in any degree. No surviving spouse shall be entitled to the benefits of this act unless she shall have been married to the deceased at the time of the injury.

(2) A child or children under sixteen years of age (and over said age if physically or mentally incapacitated from earning) whether actually dependent for support or not upon the parent at the time of his or her death.

(3) A parent of a minor entitled to the earnings of the employe at the time when the injury occurred, subject to provisions of subdivision "F" section ten hereof.

(4) If the deceased employe leaves dependent surviving spouse, the full compensation shall be paid to such spouse; but if the dependent surviving spouse dies before payment is made in full, the balance remaining shall be paid to the person or persons wholly dependent, if any, share and share alike. If there be no person or persons wholly dependent, then payment shall be made to partial dependents.

(5) In all other cases questions of dependency in whole or in part shall be determined in accordance with the fact as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be equally divided among them, and persons partially dependent, if any, shall receive no part thereof. If there is no one wholly dependent

8s and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. Provided, however, that when a lump

sum is paid as contemplated by this act, the court or commissioner, in making distribution thereof, shall take into consideration the contingent rights of partial beneficiaries or the rights of those who may become such after a wholly dependent child or children become sixteen years of age.

(6) Step-parents shall be regarded in this act as parents.

(7) Adopted child or children or step-child or children shall be regarded in this act the same as if issue of the body.

(*d*) "Injury" or "personal injury" includes death resulting from injury.

(*e*) The words "personal injury arising out of and in the course of such employment" shall include injuries to employees whose services are being performed on, in or about the premises which are occupied, used or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

(*f*) The words "injury and personal injury" shall not include injury caused by the wilful act of a third person directed against an employe for reasons personal to such employe or because of his employment.

(*g*) They shall not include a disease except as it shall result from the injury.

(*h*) "Industrial employment" includes only employment in occupation, callings, businesses or pursuits which are carried on by the employer for the sake of pecuniary gain.

(*i*) The word "court" whenever used in this act unless the context shows otherwise, shall be taken to mean the district court.

SEC. 18. (*a*) Any contract of employment, relief benefit or insurance or other device whereby the employe is required to
8*t* pay any premium or premiums for insurance against the compensation provided for in this act shall be null and void; and any employer withholding from the wages of any employe any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine not less than ten ($10.00) dollars nor more than fifty ($50.00) dollars for each offense in the discretion of the court.

No employe or beneficiary shall have power to waive any of the provisions of this act in regard to the amount of compensation which may be payable to such employe or beneficiary hereunder to whom the act applies.

SEC. 19. Any contract or agreement made by any employer or his agent or attorney with any employe or any other beneficiary of any claim under the provisions of this act within twelve (12) days after the injury shall be presumed to be fraudulent.

SEC. 20. The Iowa industrial commissioner co-operating with the employers affected by this act, or any committee or committees appointed by such employers or the Iowa industrial commissioner, shall fix standards of safety for safety appliances or places of employment, except mines under the jurisdiction of the mine inspectors.

SEC. 21. No claim of an attorney-at-law for services in securing a

recovery under this act shall be an enforceable lien thereon unless the amount of the same be approved in writing by a judge of court of record or the Iowa industrial commissioner, which approval may be made in term time or vacation.

SECTION 22. The provisions of this act shall apply to employers and employes as defined in this act engaged in intra-state commerce and also those engaged in inter-state or foreign commerce for whom a rule or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intra-state work or foreign commerce shall be clearly separable and distinguishable from inter-state or foreign commerce; provided that any such employer and workman of such em-
8u ployer working only in this state may, subject to the approval of the Iowa industrial commissioner, and so far as not forbidden by any act of congress or permitted, voluntarily by written agreement, accept and become bound by the provisions of this act in like manner and with the same force and effect in every respect as by this act provided for other employers and employes.

Part II.

SEC. 23. There is hereby created the office of Iowa industrial commissioner, to be appointed by the governor, by and with the consent of the senate. The term of office of the commissioner shall be six years. An appointment may be made to fill a vacancy or otherwise when the senate is not in session, but shall be acted upon at the next session thereof.

SEC. 24. The salary and actual necessary expenses of the commissioner shall be paid by the state, and he shall be provided with adequate and necessary office rooms, furniture, equipment, supplies and other necessaries in the transaction of the business. The salary of the commissioner shall be three thousand dollars ($3,000.00) per annum. The commissioner, by and with the consent of the executive council may fix the salary and appoint a secretary and other assistants and clerical help as may be required and needed, provided, that the salary of the secretary shall not exceed fifteen hundred dollars ($1,500.00) per annum. The salary and actual personal expense account of the commissioner shall be itemized and sworn to, and filed as other current bills as provided by statute, and warrant therefor shall be issued by the auditor upon the treasurer of the state for the payment thereof at the end of each calendar month; provided, however, that the expense account may be audited, allowed and paid at the end of each week. The commissioner shall provide himself with a seal, which shall be used to authenticate his orders, decisions and other proceedings deemed necessary, upon which shall be inscribed the words "Iowa Industrial Commissioner's Seal" and the date of organization. All other accounts made by,
8v through or under the commissioner for salaries, expenditures, unless otherwise by this act provided, shall be itemized and sworn to by the parties entitled thereto, audited by the commissioner, attested by the secretary, filed as other bills are required by statute, and a warrant shall issue therefor by the auditor of state

upon the treasurer, who shall pay the same out of the funds appropriated for the use of the commissioner as by this act provided. The salaries of all persons under the commissioner shall be audited, allowed and paid at the end of each month, and expense accounts may be audited, allowed and paid at the end of each week. The commissioner shall have the power to remove the secretary or any other person appointed to an office by him at any time the commissioner may see fit.

It shall be unlawful for any appointee by the commissioner to espouse the election or appointment of any candidate for or to any political office, or contribute to the campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointment to any political office, and any person performing the duties as an appointee under the commissioner violating the provisions of this act shall be sufficient cause for dismissal and removal from office.

Before entering upon his duties the commissioner shall qualify by taking the oath of his office, that he will support the constitution of the United States and the state of Iowa, and will faithfully and impartially, without fraud, fear or favor, discharge the duties of his office incumbent upon him, as provided by the law of the state of Iowa, to the best of his ability and understanding.

There is hereby appropriated out of any money not otherwise appropriated for the use of the commissioner, as contemplated within the terms of this act or acts amendatory thereof, or other statutes relating to the commissioner, his duties and responsibilities empowered by law, the sum of twenty thousand dollars ($20,000.00) annually, and in addition thereto the executive council shall
8w provide and furnish the commissioner with such printing as may be necessary in the transaction of the business within the contemplation of law.

SEC. 25. The commissioner may make rules and regulations not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The commissioner shall have the power to subpœna witnesses, administer oaths and to examine such books and records of the parties to a proceeding or investigation as relate to questions in dispute or under investigation. The fees for attending as a witness before the industrial commissioner shall be $1.50 per diem; for attending before an arbitration committee $1.00 per diem; in both cases five cents per mile for traveling to and from the place of hearing. The district court is hereby empowered to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records. The commissioner shall make biennial reports to the governor who shall transmit the same to the general assembly, in which among other things, the commissioner shall recommend such changes in the law covered by this act as it may deem necessary.

SEC. 26. If the employer and the employe reach an agreement in regard to the compensation under this act, a memorandum thereof shall be filed with the Iowa industrial commissioner by the employer

or employe, and unless the commissioner shall, within twenty days, notify the employer and employe of his disapproval of the agreement by registered letter sent to their addresses as given on the memorandum filed, the agreement shall stand as approved and be enforceable [enforcible] for all purposes under the provisions of this act. Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this act.

SEC. 27. If the employer and the injured employe or representatives or dependents fail to reach an agreement in regard to compensation under this act, either party may notify the industrial
8x commissioner, who shall thereupon call for the formation of a committee of arbitration. The arbitration committee shall consist of three persons, one of whom shall be the industrial commissioner who shall act as chairman. The other two shall be named, respectively, by the two parties. If a vacancy occurs it shall be filled by the party whose respresentative is unable to act.

SEC. 28. The arbitrators appointed by the parties shall be sworn by the chairman to take the following oath:

I, —— ——, do solemnly swear (or affirm) that I will faithfully perform my duties as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party.

(Signed) —— ——.

SEC. 29. It shall be the duty of the industrial commissioner, upon notification, that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The commissioner shall act as chairman, and, if either party does not appoint its member on this committee within seven days after notification as above provided, or after a vacancy has occurred, the commissioner shall fill the vacancy and notify the parties to that effect.

SECTION 30. The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be in the city, town or place where the injury occurred and the decision of the committee, together with the statement of evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial commissioner. Unless a claim for a review is filed by either party within five days, the decision shall be enforcible under the provisions of this act.

SEC. 31. The industrial commissioner may appoint a duly qualified impartial physician to examine the injured employe and make report. The fee for this service shall be five ($5.00) dollars, to be paid by the industrial commissioner together with traveling
8y expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any injured employe shall not be prohibited from testifying before the Iowa industrial commissioner or any other person, commission or court, as to the results of his examination or the condition of the injured employe.

SEC. 32. The arbitrators named by or for the parties to the dispute shall each receive five ($5.00) dollars as a fee for his services, but the industrial commissioner may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the employer who may deduct an amount equal to one-half of the sum from any compensation found due the employe. And all other costs incurred in the hearing before the board of arbitration shall be taxed to the losing party, or an equitable apportionment made thereof by the committee according to the facts.

SEC. 33. If a claim for review is filed, the industrial commissioner shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

SEC. 34. Any party in interest may present certified copy of an order or decision of the commissioner or a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of the county in which the injury occurred, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact
8z or where the decree is based upon an order or decision of the commissioner which has not been presented to the court within ten days after the notice of the filing thereof by the commissioner. Upon the presentation to the court of a certified copy of a decision of the industrial commissioner, ending, diminishing or increasing a weekly payment under the provisions of this act, the court shall revoke or modify the decree to conform to such decision.

SEC. 35. (*a*) Any payment to be made under this act may be reviewed by the industrial commissioner at the request of the employer or of the employe, and on such review it may be ended, diminished or increased subject to the maximum or minimum amounts provided for in this act if the commissioner finds the conditions of the employe warrants such action.

(*b*) Any notice to be given by the commissioner or court provided for in this act shall be in writing but service thereof shall be sufficient if registered and deposited in the mail, addressed to the last known address of the parties.

SEC. 36. Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial commissioner unless otherwise provided in this act.

SEC. 37. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employes in the course of their employment. Within forty-eight hours not counting Sun-

days and legal holidays, after the employer has knowledge of the occurrence of an accident resulting in personal injury, a report shall be made in writing by the employer to the industrial commissioner on blanks to be procured from the commissioner for that purpose.

Upon the termination of the disability of the injured employe, or if such disability extends beyond a period of sixty days, at the expiration of such period, the employer shall make a supplemental report on blanks to be procured from the commissioner for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employe, and shall state
8*aa* the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the commissioner. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty ($50.00) dollars for each offense.

All books, records and pay-rolls of the employers, coming under this act showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commissioner, or any of his representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure; the number of men employed and such other information as may be necessary for the uses and purposes of the commissioner in its administration of the law. But information obtained within the contemplation of this act shall be used for no other purpose than the information of the commissioner or insurance association with reference to the duties imposed upon such commissioner. A refusal on the part of the employer to submit his books, records or pay-rolls for the inspection of the commissioner, or his authorized representatives presenting written authority from the commissioner, shall subject the employer to a penalty of one hundred dollars ($100.00) for each such offense to be collected by civil action in the name of the state, and paid into the state treasurer.

SEC. 38. It shall be unlawful for the commissioner, during his term of office, to serve upon any committee of any political party or espouse the election or appointment of any person for any political office or contribute to any campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointed to any political office. A violation of this section shall be deemed a misdemeanor and upon conviction shall be fined one hundred ($100.00) dollars.

SECTION 39. It shall be unlawful for any person who is a candidate for the appointment as commissioner to make any promise to another, expressed or implied, in consideration of any
8*bb* assistance or influence given or recommendation made that the candidate will, if appointed as commissioner, vote to appoint such person or one whom he may recommend to an office within the power of the commissioner to appoint. A violation thereof shall be deemed a misdemeanor and upon conviction thereof shall be fined one hundred ($100.00) dollars.

SEC. 40. All recommendations to the governor of any person asking the appointment of another as commissioner shall be reduced to writing signed by the person presenting the same, which shall be filed by the governor in his office and open at all reasonable times for public inspection, and all recommendations made by any person to the commissioner for the appointment of another within the power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same and filed by the commissioner and open for public inspection at all reasonable times and hours. If any person recommending the appointment of another within the contemplation of this act refuse to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a brief memoranda thereof stating the name of the person recommended and the name of the person who made the same, which shall be filed as by this act in other cases provided. It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this act during his term of office and any member offending this statute, it shall be sufficient grounds for his removal from office and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy.

SECTION 41. The governor shall remove from office the commissioner on the grounds of inefficiency, neglect of duty, or malfeasance in office, upon written charges having been filed with the executive council and sustained by proofs. But written notice of such charges, together with a copy thereof, shall be served upon the accused ten (10) days before the time fixed for hearing. The executive council shall have jurisdiction to hear the case, and shall make such finding in accordance with justice and the law. The finding shall be reduced to writing, and report and finding filed with the governor.

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Part III.

SEC. 42. Every employer, subject to the provisions of this act, shall insure his liability thereunder in some corporation, association or organization approved by the state department of insurance. Every such employer shall within thirty (30) days after this act goes into effect exhibit on demand of the state insurance department evidence of his compliance with this section. And if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under part one (1) of this act.

SEC. 43. For the purpose of complying with the foregoing section, groups of employers by themselves or in an association with any or all of their workmen, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the state insurance department and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with the preceding section.

SEC. 44. Subject to the approval of the Iowa industrial commissioner any employer or group of employers may enter into or con-

tinue an agreement with his or their workmen to provide a scheme of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act; but such scheme shall in no instance provide less than the benefits here secured, nor vary the period of compensation provided for disability or for death, or the provisions of this act with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; provided, further, that the approval of the Iowa industrial commissioner shall be granted, if the 8dd scheme provides for contribution by workmen, only when it confers benefits in addition to those required by this act commensurate with such contributions.

SEC. 45. Whenever such scheme or plan is approved by the Iowa industrial commissioner, he shall issue a certificate to that effect, whereupon it shall be legal for such employer, or group of employers, to contract with any or all of his or their workmen to substitute such scheme or plan for the provisions of this act during a period of time fixed by said department.

SEC. 46. Such scheme or plan may be terminated by the Iowa industrial commissioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this act; but from any such order of said Iowa industrial commissioner the parties affected, whether employer or workman, may, upon the giving of proper bond to protect the interests involved appeal for equitable relief to the district court of this state.

SEC. 47. No insurer of any obligation under this act shall either by himself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this act more than fifteen (15) per cent of the premium charged.

SEC. 48. Every policy issued by any insurance corporation, association or organization to assure the payment of compensation under this act shall contain a clause providing that between any employer and the insurer, notice, to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer and the insurer shall be bound by every agreement, adjudgment, award or judgment rendered against the insured.

SEC. 49. No policy of insurance issued under this act shall contain any provision relieving the insurer from payment if the in- 8ee sured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid. Every policy shall provide that the workmen shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability or disability of the insured to receive the amount due and pay it over to the insured workman, or his dependents, said insurer shall pay the same directly to such

workman, his agent, or to a trustee for him or his dependents, to the extent of discharging any obligation of the insured to said workman or his dependents.

SEC. 50. Where an employer coming under this act furnishes proofs to the insurance department satisfactory to the insurance department and Iowa industrial commissioner, of such employer's solvency and financial ability to pay the compensation and benefits as by this act provided and to make such payments to the parties when entitled thereto, or when such employer deposits with such insurance department security satisfactory to such insurance department and the Iowa industrial commissioner as will secure the payment of such compensation, such employer shall be relieved of the provision of section forty-two (42) of this act. Provided that such employer shall from time to time, as may be required by such insurance department and Iowa industrial commissioner, furnish such additional proof of solvency and financial ability to pay as by this section of this act provided.

The insurance department and Iowa industrial commissioner may, at any time, upon reasonable notice to such employer and upon hearing, revoke for cause any order or approval theretofore made, as by this act provided and within the contemplation of this section.

SEC. 51. Part one of this act shall take effect from and after July first, 1914, and parts two and three July fourth, 1913.

And any employer or employee who serves the notice to reject the terms of the act as by the act provided not less than thirty days before part one thereof takes effect, such notice for the purpose — rejecting the terms of the act shall have the same force and effect as though part one had taken effect July fourth, 1913.

Approved April 18 A. D. 1913.

9 And thereafter to-wit: On the 13th day of January A. D. 1914 there was filed in said cause by the Respondents, a Motion to Dismiss which is in words and figures following to-wit:

In the District Court of the United States in and for the Southern District of Iowa, Central Division, Des Moines, Iowa.

J. C. HAWKINS, Plaintiff,

vs.

JOHN L. BLEAKLY, Auditor of the State of Iowa, and WARREN GARST, Iowa Industrial Commissioner, Defendants.

Motion to Dismiss.

Comes now John L. Bleakly, Auditor of the State of Iowa, and Warren Garst, Iowa Industrial Commissioner, defendants in the above cause and move the court for a rule to dismiss plaintiff's cause of action as set forth in the bill of complaint filed herein, and as grounds therefor state:

First. That said bill of complaint fails to allege or show facts sufficient to constitute a cause of action in favor of the plaintiff.

Second. That it appears on the face of said bill of complaint that the statements and allegations therein made do not
10 entitle the plaintiff to the relief demanded or to any other relief whatsoever.

Third. That said bill of complaint fails to show that chapter 147, acts of the thirty-fifth general assembly of Iowa, copy of which is attached to said bill of complaint, violates any provision of the constitution of the United States or of the constitution of the State of Iowa or that the same is invalid or unconstitutional for any reason whatsoever.

Fourth. That it appears upon the face of complainant's bill of complaint that complainant is not entitled to maintain this suit and that this court is without jurisdiction because (*a*) complainant does not show by said bill of complaint that he will suffer in the sum of three thousand dollars, or in any particular amount whatever; (*b*) it affirmatively appears from said bill of complaint that complainant has elected to reject the terms of the act providing for a schedule of compensation for injured employees, and hence complainant can only complain of the fact that the act in question deprives him of certain common law defenses; (*c*) having elected not to come under the terms and provisions of the act, complainant is not denied due process or the equal protection of the laws as guaranteed by the Fourteenth Amendment, nor is he deprived of any other right guaranteed to him by the Fourteenth Amendment, or any provision of the constitution of the United States.

Fifth. This action should be dismissed because every constitutional question which complainant has raised in his bill of complaint is governed exclusively by whether or not the act conforms to the constitution and the fundamental law of the state of Iowa.

GEORGE COSSON.
HENRY E. SAMPSON.

Endorsed: "Filed January 13, 1914. W. C. McArthur, Clerk."

11 And thereafter to-wit: On the 22nd day of June A. D. 1914 there was filed in said cause Views of the Court, Hon. Smith McPherson, Judge which is in words and figures as follows to-wit:

In the District Court of the United States in and for the Southern District of Iowa, Central Division.

No. 12-A. Equity.

J. C. HAWKINS, Complainant,
against
JOHN L. BLEAKLEY, State Auditor; WARREN GARST, Industrial Commissioner, Respondents.

Views of the Court.

Ryan & Ryan, Des Moines, Iowa; J. P. Hewitt, Des Moines, Iowa, Counsel for Complainant.

George Cosson, Des Moines, Iowa; John Clarkson, Albia, Iowa, Counsel for Respondents.

SMITH MCPHERSON, *Judge:*

This is an action by a bill in equity exhibited by complainant against state auditor Bleakley and state industrial commis-
12 sioner Garst seeking to enjoin the enforcement of chapter 147 of the laws of the thirty-fifth general assembly of Iowa (1913) known as the Employers' Liability or Workmen's Compensation Law. The complainant being an employer of labor and within the terms of the statute contends that the statute is unconstitutional and void. The defendant moves to dismiss the case, equivalent to a demurrer, on the grounds that the bill is without equity and that the statute is valid. I do not care to prepare a formal opinion, and I make known my views as if orally stated.

All thoughtful persons agree that present conditions call for legislative, judicial, or economical relief, one or all. Enterprises such as railroads, street car lines, interurban lines, manufacturing plants of all kinds, with rapidly moving machinery, usually hazardous, with the dangerous invisible electric current of high voltage, the agency of steam, geared with cog-wheels, belts, pulleys, and other appliances, are killing and crippling thousands and thousands of persons every year. This is so even when the employes are sober, attentive and watchful, and is materially increased when such persons or some of them are negligent. This means poverty and distress, and is followed by charities, and too often filling the poor-houses and sanitariums. The man with an eye gone, a leg or arm off, or otherwise physically or mentally impaired, has but a limited or no chance in life. This burden sometimes falls upon the injured person alone, sometimes on the wife, children or parents, and often on the general public by increased taxation. Presidents, congressmen, legislators and men of eminence for years have been urging actual reforms in these matters, and the employes have been insisting upon relief. All persons know these things to be so, and the literature and debates for years have been devoted to the query as to the solution and remedy. The courts have not been lagging so

much as retrograding in dealing with the subject. The time of the courts is consumed in listening to the harrowing stories sometimes of truth and sometimes of perjury. Claim agents are busy from the hours of death or injury in locating and preserving the testimony that the corporation may be protected. The friends and lawyers and agents of the dead and injured are equally industrious. We often see advertisements in the press of "witnesses wanted to the occurrence." We have new words in the dictionery, but the new words "snitches," and "ambulance chasers" are of the simple and well-known language. Verdicts must be for twice the fair amount to be awarded as damages, so as to allow the "contingent fee" or the injured man his widow or children must accept half the sum justly due. And these results are only obtained after years of litigation. Sickness, unavoidably out of town, urgent business in other courts, prolong the litigation. When judgment is at last obtained in favor of the one side or the other, appeals, certiorari, mandamus and writs of error, one or all are sought, and then sometimes reversals, and then other delays. Sometimes verdicts are returned and later on it is ascertained that the testimony was to meet the law of the case. Sometimes the verdicts are returned for only part of the sum that should have been awarded and sometimes the verdict is followed by getting well so speedily as to be termed almost miraculous. So that regardless upon which side the greater wrongs occur, a question no one can decide, all ought to concede that which is the truth that the best the courts can do in many cases is frailty itself. Something like thirty percent of the time of the courts is taken with these cases adding enormously to the expense of the tax-payers. So that if there is to be a remedy for these evils, and that remedy is limited to the courts, reforms more than paper reforms must be brought about. And such real reforms are well nigh hopeless, if the past thirty years of judicial history is to be a criterion.

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To meet the burdens created by death and injury thus brought about, by public taxation, is to argue the question by idle talk. The people are now groaning under taxation.

Damages not easily avoided must go into the cost of production and be borne by the consumer, and those readily avoided in some instances at least should be borne by him or it responsible therefor. But that aids but little because the question as to who is responsible is often a complicated and difficult question and one not easily solved, and often solved by well-nigh a guess.

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Nearly every foreign country has attempted to solve it by legislation, and twenty or more of the United States within a few years have enacted statutes for the purpose of affording a remedy. Some of these statutes have been overthrown by the courts and some have been sustained as valid legislation. The objections usually urged are those against inpinging upon the liberty of contract, denying due process of law, and denying the right of trial by jury. The clause in our state constitution providing that the right of trial by jury shall remain inviolate presents a serious and important

question. It is likewise an humorous objection, because a trial by jury is seldom asked or desired by the employer of labor. But waiving the humorous phases, it is both important and necessary to at lease briefly consider the constitutional objections. But in doing this I shall not review the great decisions on constitutional law, but will be content by analyzing this statute. This is sufficient because all agree that the constitutional provisions can be waived. They are forced on no one, if both agree to waive them. And this waiver can be by writing, or verbally done, or done by common consent or acquiescence.

The statute is one of much verbiage and prolixity of fifty-one lengthy sections. But once and for all it can be stated and correctly stated that under this statute every employer and every employe can have his day in court, and can have due process of law, and can have a jury trial if one or all are desired. No one of these constitutional rights is denied. It is true that such can be had with some limitation on what has heretofore existed, which limitations will presently be noted. Whether the parties are denied the fullest scope of the so-called liberty of contract, is not longer argued with much seriousness by reason of the decision by the Supreme Court of the United States in the case from this
15 state of the Chicago, Burlington & Quincy Railroad vs. McGuire, 219 U. S.

The first twenty-two sections of this lengthy statute fix the liability of the employer and the rights of the employe. A scale of compensation is fixed and made certain. Each party can come within the statute or remain outside of the statute. Each party has his election. Many of the states for many years have had statutes fixing the liability with precision in cases of death, and in no instance has any court held such statute invalid. And why a statute cannot fix with certainty the damage to be allowed in case of the loss of an arm, leg, eye, or other injury, is not perceived and counsel fail to state any legal or constitutional objection thereto. But it is argued that if the employer fails to elect to come within the statute and have the case tried and determined as heretofore, the employer cannot urge the defense of assumption of risks by the employe or contributory negligence. And yet each of these defenses first *creaped* into the law by slight recognition and then grew and developed by judicial decisions without the aid of legislation. And it cannot be so that simply because such became recognized as the law by judicial decisions that they cannot be abridged or denied by legislation. The same is true of the doctrine of fellow servants. That doctrine never was affirmed by legislation except impliedly and impliedly only because of legislation action denying such defense as to railroads and some other hazardous employments. All lawyers know that the court-made rule in Iowa for a long time maintained but against the decided weight of authority is that the plaintiff must both plead and prove that the injured person must show that he was without fault or negligence. Most of appellate courts hold otherwise, holding that it is a defense only. United States courts sitting in Iowa as

well as in all the other states hold that it is defensive only and requires the defendant to show by a preponderance of testimony that the injured man or deceased contributed to the injury. For a long time many of the states had the rule of comparative
16 negligence, and now in some instances Iowa has such a rule. But in none of these matters is there any vested right for or against any of these defenses or burdens placed upon the plaintiff. They closely belong to or inhere in police regulations for the preservation of *of* life and limb and are within the legislative powers of the state, and in interstate commerce matters within the powers of congress. The decisions of appellate courts, the Supreme Court of the United States included, are recent and well known by the profession. It is true that if the parties elect to come within the statute they must do so by notice or by acquiescence. This is attended with some formalities, but that is a question of detail and policy alone belonging to the legislature and outside the province of the courts to either regulate or condemn.

The next eighteen sections of the statute relate to the appointment of a commissioner, an office now held by the defendant Garst. *He and* under his direction arbitrations are brought about. Arbitrations existed at common law and they are allowable under the Iowa statute. The conclusion and award of an arbitrator can be enforced by judicial proceedings. There is nothing new about all this. All these arbitrations are agreed to under this statute either by specific agreement or by acquiescence.

The remaining nine sections of the statute relate to insurance to cover liabilities for damages. The Chicago, Burlington & Quincy Railroad Company for years had a scheme of insurance which if resorted to by the injured employe was a bar to a recovery by an action in court. Finally that scheme was condemned by Iowa legislation and the statute prohibiting it was sustained by the United States Supreme Court affirming the Iowa Supreme Court in the McGuire case hereinbefore referred to. The insurance scheme was held lawful by the Iowa Supreme Court in a number of cases prior to the adoption of the legislation referred to. And now we have additional legislation allowing the very thing condemned by the prior legislation. And so it is that no constitutional objection can be made to the latest legislation.

17 Nearly all of the objections to this statute are argued from the standpoint of morals and propriety and policy. As of course those were questions for the legislature. This statute may have and no doubt does have many objectionable features, but that it is a statute with right tendencies I have no doubt. And all such legislation is a matter of growth and development, and in the end when mature, as it ought to be and quite likely will be, beneficial results will be obtained. At all events, this legislation cannot bring forth worse results than we now have as to these matters by court procedure. And still further, and in no event can courts condemn the mere policy or proprieties of the law. I find no constitutional objections to this measure.

Defendants' motion will be sustained and the case dismissed with prejudice.

Des Moines, Iowa, June 22, 1914.

(Endorsed: "Filed June 22, 1914, Wm. C. McArthur, Clerk.")

18 And thereafter to-wit: On the same day June 22nd 1914 there was filed in said cause a Decree dismissing the bill of complaint which is in words and figures following to-wit:

In the District Court of the United States in and for the Southern District of Iowa, Central Division.

No. 12-A. Equity.

J. C. HAWKINS, Complainant,
against
JOHN L. BLEAKLEY, State Auditor; WARREN GARST, Industrial Commissioner, Respondents.

Decree.

This case came on heretofore on the motion of the defendants to dismiss, each side being represented by counsel; the case was fully argued and by the court taken under advisement.

Now at this time the court being fully advised, sustains said motion.

It is therefore considered, ordered, adjudged and decreed that the said motion of the defendants to dismiss be and the same is hereby sustained and this case is dismissed with prejudice at the costs of the complainant, which costs will be taxed by the clerk, and if
19 not paid within twenty (20) days a writ of execution will issue therefor.

To each and every of which the complainant at the time in open court excepts.

Done at Des Moines, Iowa, June 22, 1914.

SMITH McPHERSON, *Judge.*

Endorsed: "Filed June 22, 1914. Wm. C. McArthur, Clerk."

20 And thereafter to wit: On the 23rd day of June A. D. 1914 there was filed in said cause a petition for Appeal and Order allowing same filed June 25, 1914, which are in words and figures following to-wit:

District Court of the United States, Southern District of Iowa, Central Division.

12-A. Equity.

J. C. HAWKINS, Plaintiff, Appellant,
against
JOHN L. BLEAKLEY, State Auditor; WARREN GARST, Industrial Commissioner of Iowa, Defendants, Respondents.

The above named J. C. Hawkins, conceiving himself aggrieved by the decree and order entered June 22nd, 1914, in the above entitled proceeding, doth hereby appeal to the Supreme Court of the United States, and he prays that this appeal may be allowed, that the penal sum of a cost bond on such appeal may be fixed by this Honorable Court and that a transcript of the record and proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

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JAMES P. HEWITT AND
RYAN & RYAN,
Attorneys for Plaintiff and Appellant, J. C. Hawkins.

Des Moines, Iowa, June 23, 1914.

(Endorsed:) Filed June 23rd 1914. Wm. C. McArthur, Clerk.

In accordance with the above prayer the appeal of plaintiff, J. C. Hawkins is allowed from the order and decree entered in this case on June 22nd, 1914 and the penal sum for the costs of such appeal be and it is fixed at one hundred dollars the surety or sureties on such bond to be approved by the clerk of this court. But said bond will not be a supersedeas.

SMITH McPHERSON, *Judge.*

Endorsed: "Filed June 25 1914. Wm. C. McArthur, Clerk."

22 And thereafter to-wit: On the same day June 23rd 1914 there was filed in said cause An Assignment of Errors which is in words and figures following to-wit:

District Court of the United States, Southern District of Iowa, Central Division.

No. 12-A. Equity.

J. C. HAWKINS, Plaintiff, Appellant,
against
JOHN L. BLEAKLEY, State Auditor; WARREN GARST, Industrial Commissioner of Iowa, Defendants, Respondents.

Assignments of Errors.

The above named appellant assigns the following errors which appear on the face of the record;

1. The said District Court erred in sustaining defendants' motion to dismiss;

2. The said District Court erred in dismissing plaintiff's cause of action with prejudice;

3. The said District Court erred in entering an order and decree denying plaintiff any relief whatever; and in holding that
23 the averments of plaintiff's petition showed plaintiff entitled to no relief whatever and in rendering judgment against plaintiff for costs.

Wherefore said appellant prays that the said orders and decree be reversed and for such other order as shall be proper in the premises.

JAMES P. HEWITT AND
RYAN & RYAN,
Attorneys for Appellant.

Endorsed: "Filed June 23/14. Wm. C. McArthur, Clerk."

24 And thereafter to-wit: On the 27th day of June A. D. 1914 there was filed in said cause an Appeal Bond for costs, which is in words and figures following to-wit:

In the District Court of the United States for the Southern District of Iowa, Central Division.

J. C. HAWKINS, Plaintiff,
vs.
JOHN L. BLEAKLY, Auditor of the State of Iowa, and WARREN GARST, Iowa Industrial Commissioner, Defendants.

Appeal Bond for Costs.

Know all men by these presents that I, J. C. Hawkins, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto John L. Bleakley, Auditor of the State of Iowa and Warren Garst, Iowa Industrial Commissioner, in

the penal sum of One Hundred Dollars to be paid to said obligees, being appellees herein, for the payment of which well and truly to be made, we bind ourselves and each of us, our heirs and each of our heirs, executors and administrators, jointly and severally by these presents.

Whereas lately at the May 1914 term of said court in a suit pending in said court between J. C. Hawkins the above named principal as plaintiff and John L. Bleakley, Auditor of the State of Iowa, and Warren Garst, Iowa Industrial Commissioner, the
25 obligees above named, as defendants a judgment and decree was rendered against said plaintiff and in favor of said defendants from which judgment and decree an appeal has been allowed to the United States Supreme Court and the said plaintiff is now prosecuting this appeal to reverse said judgment and decree;

Now the condition of the above obligation is such that if the said J. C. Hawkins shall prosecute said appeal to effect and answer all damages and costs if he fails to make good his appeal, then this obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

—— ——.
—— ——.

J. C. HAWKINS, *Principal,*
By JAMES P. HEWITT AND
RYAN & RYAN,
His Attorneys.

AMERICAN SURETY COMPANY
OF NEW YORK, *Surety,*
By B. C. MATHER, *Res. Vice-Pres't.*
W. W. BOYCE, *Res. Ass't Sec'y.*
—— ——, *Surety.*

Filed and Approved this — day of June, 1914.
—— ——.

Endorsed: "Approved and Filed June 27, 1914. Wm. C. McArthur, Clerk."

26 And thereafter to-wit: On the 1st day of July A. D. 1914 there was filed in said cause a præcipe for transcript of the record on appeal by Appellant, which is in words and figures following to-wit:

In the District Court of the United States for the Southern District of Iowa, Central Division.

J. C. HAWKINS, Appellant,
vs.
JOHN L. BLEAKLEY, Auditor of the State of Iowa, and WARREN GARST, Iowa Industrial Commissioner, Appellees.

Appellant's Præcipe for Transcript.

To the Clerk of said Court:

Please prepare transcript of the following portions of the record in said case.

Bill of Complaint including exhibit thereto attached.
Motion to Dismiss.
Order and Final Decree.
Order fixing Appeal Bond.
Assignment of Errors.
Appeal Bond.
27 Præcipe for Transcript.
Citation with Proof of Service thereof.

JAMES P. HEWITT AND
RYAN & RYAN,
Attorneys for J. C. Hawkins.

Des Moines, Iowa, June 27, 1914.

DES MOINES, IOWA, June 27th, 1914.

We hereby acknowledge due service of above Præcipe for Transcript.

GEORGE COSSON,
Att'y Gen.;
HENRY E. SAMPSON,
Ass't Att'y Gen.,
Attorneys for Appellees, John L. Bleakley, Auditor of Iowa, and Warren Garst, Iowa Industrial Commissioner.

Endorsed: "Filed July 1, 1914. Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy."

28 UNITED STATES OF AMERICA,
Southern District of Iowa, ss:

I, Wm. C. McArthur, Clerk of the District Court of the United States for the Southern District of Iowa, hereby certify the foregoing twenty-seven (27) pages to contain a full, true and complete transcript of the record of the case of J. C. Hawkins Complainant against John L. Bleakly, Auditor of the State of Iowa, et al., Respondents, No. 12-A—Equity, Central Division, as called for in the

Præcipe for Transcript of the record filed in said cause July 1 A. D. 1914.

I further certify that I transmit herewith as part of said transcript the original Citation with acceptance of service thereof by the Solicitors for the Respondents (Appellees).

In witness whereof, I hereunto set my hand and affix the seal of said Court at my office in the City of Des Moines in said District this 22nd day of July A. D. 1914.

[Seal U. S. District Court, Southern District of Iowa.

WM. C. McARTHUR,
Clerk U. S. District Court, Southern District of Iowa.

Endorsed on cover: File No. 24,331. S. Iowa D. C. U. S. Term No. 219. J. C. Hawkins, appellant, vs. John L. Bleakly, auditor of the State of Iowa, and Warren Garst, Iowa industrial commissioner. Filed August 6, 1914. File No. 24,331.

I.

STATEMENT OF THE CASE.

The legislature of Iowa enacted a workmen's compensation law set out in complainant's petition as an exhibit. This law was approved by the Governor of Iowa. In his petition complainant recites wherein he is injuriously affected by the provisions of the said statute of which he complains and that he has never consented to become subject to the provisions thereof. Beginning on page 3 of the printed Transcript of Record complainant, in his petition, urges these objections to the validity of said statute: "Your orator "shows to this Honorable Court that the compulsory enforcement "of the provisions of said act deprives your orator, without his "consent, of an election to insure, or not to insure, his employees "against injury or pay the same where he may be liable without "cumpulsion—said provisions of the act as to insurance being al- "ready in effect and compulsory compliance therewith by your "orator resting entirely in the discretion of Warren Garst, the "industrial commissioner, provided for in said act. Your orator "further shows to this Honorable Court that under the conditions "above described the said act does, and, in the future will, deprive "your orator of the right of trial by jury and of judicial proceed- "ings according to the course of the common law and will deprive "your orator of his property otherwise than by the judgment of "your orator's peers and by the law of the land and said act "abridges the privileges and immunities of your orator as a citizen "of the United States and deprives him of his property and rights "without due process of law and denies to your orator within the "jurisdiction of this court equal protection of the laws and impairs "the obligations of the contracts of your orator above referred "to. And your orator further shows that said act denies to your "orator the right to undertake to effect a settlement with any of "his employes with respect to injuries which they may sustain "while in the employ of your orator, and, upon such attempt, no "matter how fairly made, the said act raises a presumption of "fraud against your orator and raises a like presumption as to "any settlement which may be affected within 12 days after an "injury may be sustained. And your orator further shows to this "Honorable Court that by the provisions of said act your orator's "employes have the option to reject the provisions of said act un- "affected by any election your orator may make but that, neverthe- "less, your orator as an employer is held subject to said provisions

"and may not relieve himself therefrom except by expressly in "writing waiving all his rights to interpose defenses. Your "orator alleges that the provisions of the act which provide that "certain of its provisions shall become law at the election of the "employe impairs the validity of said provisions for the reason "that no law is valid which depends upon approval of persons "thereby affected."

On pages 25 and 26 of the printed Transcript of Record is the motion of defendants to dismiss plaintiff's cause of action as set forth in his said complaint. The grounds of this motion are that said bill of complaint by its averments do not show plaintiff entitled to any relief and that said bill fails to show that the act complained of violates any provisions of the constitution of the United States or of the State of Iowa or that said act is invalid or unconstitutional for any reason whatever.

Notwithstanding the petition alleges there is involved more than $3000, exclusive of interest and costs (Transcript of Record page 2) another ground of the motion is that there is a failure to allege said amount as damages sustained. The further ground is stated as follows on page 26 of the transcript: "It affirmatively "appears from said bill of complaint that complainant has elected "to reject the terms of the act providing for a schedule of com- "pensation for injured employees and hence complainant can only "complain of the fact that the act in question deprives him of "certain common law defenses and having elected not to come un- "der the terms and provisions of the act, complainant is not denied "due process or the equal protection of the laws guaranteed by the "Fourteenth Amendment, nor is he deprived of any other right "guaranteed to him by the Fourteenth Amendment, or any provi- "sion of the constitution of the United States." The final ground is that state courts have exclusive jurisdiction. The motion to dismiss was sustained and, as we understand the rule, this order and the judgment thereon rendered must be reversed if the petition presented any cause of action whatever; in other words, there must be a reversal if the act is invalid in any single respect.

II.

SPECIFICATION OF ERRORS RELIED ON.

1. The district court erred in sustaining defendant's motion to dismiss plaintiff's cause of action;

2. The district court erred in holding that plaintiff's bill of complaint fails to show or allege sufficient facts to constitute a cause of action in favor of plaintiff;

3. The district court erred in holding that the bill of complaint on its face shows that the allegations and statements therein made do not entitle plaintiff to any relief whatever;

4. The district court erred in holding that chapter 147 of the Acts of the 35th General Assembly of Iowa, a copy of which is attached to plaintiff's bill of complaint, violates no provision of the constitution either of the United States or of the state of Iowa and that said chapter is valid and constitutional;

5. The court erred in holding that plaintiff is not entitled to maintain this action and that the district court was without jurisdiction;

(a) because complainant does not show by his bill of complaint that he will suffer in the sum of $3000, or in any particular amount whatever,

(b) because it affirmatively appears from said bill of complaint that complainant has elected to reject the terms of the act providing for a schedule of compensation for injured employes and thereby complainant is deprived of the right to complain of anything else than that he is deprived of certain common law defenses,

(c) because of having elected not to come under the terms and provisions of the act it results that complainant is not denied due process or the equal protection of the law as guaranteed by the Fourteenth Amendment and is deprived of no other right guaranteed by said amendment or by the constitution of the United States.

6. The district court erred in holding this action should be dismissed because every constitutional question which complainant has raised in his bill of complaint is governed exclusively by whether or not the act of the legislature complained of conforms to the constitution and fundamental law of the state of Iowa.

7. The district court erred in entering a judgment of dismissal against complainant and in rendering judgment against complainant for the costs of this action.

III.

BRIEF OF APPELLANT'S ARGUMENT.

1. It is provided in section 1, Amendment 14, Constitution of the United States; "No state shall make or enforce any law which "shall abridge the privileges or immunities of citizens of the "United States, nor shall any state deprive any person of life, "liberty or property, without due process of law, nor deny to any "person within its jurisdiction, the equal protection of the law."

Constitutional safeguards are evolutions and often are crystallizations of antecedent enactments. The political history of the state of Iowa and of the territories from which it was formed, curiously illustrate this fact. To begin with, the "Ordinance for the gov-"ernment of the territory of the United States northwest of the "river Ohio," was adopted by the Continental Congress, July 13, 1787. In this connection we beg leave to show the steps by which Iowa progressed to statehood; afterwards we shall point out consequent still binding and operative provisions on line with the provisions of the Fourteenth Amendment above quoted. Larned's History for Ready Reference, Vol. V., pages 3655 *et seq.*, with sufficient fullness for our purpose traces the evolution of Iowa as a state; "From 1805 to 1809, Wisconsin formed a part of Indiana "Territory. From 1809 to 1818 her territory was embraced in "the Territory of Illinois, excepting a small projection at the north-"east which was left out of the described boundaries and be-"longed nowhere. When Illinois became a State, in 1818, and "her present boundaries were established, all the country north "of them was joined to Michigan Territory. In 1834 that huge "Territory was still further enlarged by the temporary addition to "it of a great area west of the Mississippi, embracing the present "states of Iowa, Minnesota and part of Dakota. It was an un-"wieldly and impracticable territorial organization, and move-"ments to divide it, which had been on foot long before this last "enlargement, soon attained success. In 1836, the year before "Michigan became a State with her present limits, the remaining "Territory was organized under the name of Wisconsin. Two "years later by act of June 12, 1838, congress still further con-"tracted the limits of Wisconsin by creating from its trans-Missis-"sippi tract the Territory of Iowa. This, however, was in ac-"cordance with the design when the country beyond the Missis-"sippi was attached to Michigan Territory for purposes of tempo-"rary government; so no objection was entertained to this arrange-"ment on the part of Wisconsin. The establishment of Iowa had "reduced Wisconsin to her present limits, except that she still held "as her western boundary the Mississippi river to its source, and a "line drawn due north therefrom to the international boundary. "In this condition Wisconsin remained until the act of Congress "approved August 6, 1846, enabling her to form a state constitu-"tion. Wisconsin was admitted into the Union by act approved "May 29, 1848, with her present limits."

The Fourteenth Amendment of the Federal Constitution extends to the entire Union its guaranties of the right of trial by jury and by due process of law; the state of Iowa, as part of the

Northwest Territory has special sanction of that right. In the "Ordinance for the Government of the Territory of the United "States northwest of the river Ohio," adopted July 13, 1787, we find this language; *"It is hereby ordained and declared by the au- "thority aforesaid,* That the following articles shall be considered "as articles of compact between the original states and the people "and states in said territory, and forever remain unalterable un- "less by common consent" * * *. In article 2 under above quoted language it is provided: "The inhabitants of the said territory "shall always be entitled to the benefit of the writ of habeas corpus "and trial by jury," etc. In the same section is the provision that: "No man shall be deprived of his liberty or property but by the "judgment of his peers or the law of the land." The last paragraph of said article 2 is as follows: "And in the just preservation "of rights and property, it is understood and declared that no "law ought ever to be made or have force in the said territory, "that shall in any manner whatever interfere with or affect "private contracts or engagements, *bona fide* and without fraud "previously formed." In article 4 of said ordinance it is provided: "The said territory, and the states which may be "formed therefrom shall forever remain a part of this confederacy "of the United States of America, subject to the articles of con- "federation and to such alterations therein as shall be constitu- "tionally made, and to all the acts and ordinances of the United "States, in congress assembled, conformable thereto." In section 5 of said ordinance provision is made for the formation of states from said Northwest territory, "provided the constitution "and government so to be formed shall be republican and in con- "formity to the principles contained in these articles." On January 11, 1805, there was approved the act of congress setting off the territory of Michigan from that of Indiana (Laws U. S. 2 L. & B.'s Ed. 309, 3 B. & D.'s Ed. 632), and in that act it was provided that the government of the territory of Michigan should be in all respects similar to that provided by the ordinance of 1787 and that the inhabitants of the newly formed territory should be entitled to, and enjoy, all the privileges, rights and advantages granted and secured by said ordinance of 1787. Chapter 54, First Session of 24th Congress, establishing the territorial government of Wisconsin, was approved April 20, 1836; section 12 of which provides: "That the inhabitants of the said territory shall be en- "titled to, and enjoy, all and singular, the rights, privileges and "advantages granted and secured to the people of the territory of "the United States northwest of the river Ohio." etc. The same section guaranties to said inhabitants all the privileges and immuni-

ties guarantied the people of Michigan in the act by which that territory was organized. The act of congress entitled; "An act "to divide the Territory of Wisconsin and to establish the Ter- "ritorial Government of Iowa," (Second Session 25th Congress ch. 96) was approved June 12, 1838. By section 12 thereof the inhabitants of the Territory of Iowa were declared entitled to all the privileges, rights and immunities theretofore granted and secured to the Territory of Wisconsin and its inhabitants. On March 3d, 1845, there was approved chapter 48 of the Second Session of 28th Congress which was entitled; "An act for the admis- "sion of the state of Iowa and Florida into the Union," of which act the preamble recited that a constitutional convention in Iowa had formed a constitution for the government of Iowa as a state; that said constitution was republican and that thereunder Iowa was asking admission to the Union. Section 4 of said act required the assent of a majority of the electors, or of the legislators, of said state to the provisions of said act as a condition on which the state should be admitted into the Union. In the constitution of Iowa referred to in said preamble there was this provision as to trial by jury; "The right of trial by jury shall remain inviolate." This provision is found in the present Constitution of Iowa. Art. 1, Sect. 9.

It will thus be seen that the inhabitants of the territory now composing the state of Iowa are; first, by the provisions of the Ordinance of 1787, as part of the Northwest territory, guarantied the right of trial by jury and thereby it is enacted that no one of said inhabitants shall be deprived of his liberty or property but by judgment of his peers or the law of the land; second, the said guaranty is reaffirmed by the act of congress entitled; "An act to "divide the Indiana Territory into two separate governments," approved January 11, 1805; third, by congress there is again confirmed this guaranty in the act entitled; "An act establishing the "Territorial Government of Wisconsin", approved April 20, 1836; fourth, said guaranty is again reiterated by Congress in its act, entitled; "An act to divide the Territory of Wisconsin and to "establish the Territorial Government of Iowa," approved June 12, 1838; fifth, said guaranty is found in the act of congress entitled; "An act for the admission of the states of Iowa and "Florida into the Union," approved March 3, 1845 and in the constitution of Iowa which was sanctioned by said act of admission. These congressional enactments authoritatively illustrate the intent of the provisions of article 2 of the Ordinance of 1787 that, "the people of the said territory shall always be entitled to "the benefits of trial by jury," and that; "No man shall be de-

"prived of his liberty or property but by the judgment of his peers "or the law of the land." In view of the provision in said ordinance that the articles thereof "shall be considered as articles of "compact between the original states and the people and states in "the said territory and forever remain unalterable, unless by com- "mon consent", such reiteration was perhaps unnecessary. In this connection it is proper to suggest that one of the provisions declared binding as contractual and unalterable is the closing sentence of article 2; "And in the just preservation of rights and property, "it is understood and declared that no law ought ever to be made "or have force in the said territory, that shall in any manner what- "ever interfere with or affect private contracts or engagements, "bona fide, and without fraud, previously formed."

The legislation above reviewed, serves concretely to illustrate the terms, "privileges or immunities" and the denials contemplated in the Fourteenth Amendment of the Federal Constitution by this language; "No state shall make or enforce any law which "shall abridge the privileges or immunities of citizens of the "United States, nor shall any state deprive any person of life, "liberty or property, without due process of law, nor deny to any "person within its jurisdiction the equal protection of the law." These provisions of said amendment should therefore be applied in the light of the above history of congressional legislation for that legislation has never been modified, much less, repealed.

2. The first obnoxious feature of the act under consideration which we shall take up is that which interferes with and affects private contracts. Beginning at the bottom of page 8 of the Transcript of Record there are the following provisions of said act; "In any case where an employee, or one who is an applicant for "employment, elects to reject the terms, conditions, and provisions "of this act, he shall, in addition to the notice required by sub- "division (b) of section 3 of this act state in an affidavit to be filed "with said notice who, if any person, requested, suggested, or "demands of such person to exercise the right to reject the provi- "sions of this act. And if request, suggestion, or demand has "been made of such employee by any person, such employee shall "give the name of the person who made the request, suggestion, or "demand, and all of the circumstances relating thereto, the date and "place when and where made, and persons present, and, if it be "found that the employer of such employee, or an employer to "whom an applicant for employment, or any person a member of "the firm, association, corporation, or agent or official of such "employer made a request, suggestion, or demand of such em- "ployee or applicant for employment to reject the terms,

" conditions and provisions of this act, such request, suggestion, or " demand, if made under such conditions, shall be conclusively pre- " sumed to have been sufficient to have unduly influenced such em- " ployee or an applicant for employment to exercise the right to " reject the terms of this act, and the rejection made under such " circumstances shall be conclusively presumed to have been pro- " cured through fraud and thereby fraudulently procured, and " such rejection shall be null and void and of no effect.

" No person interested in the business of such employer, finan- " cially or otherwise, shall be permitted to administer the oath to " the affidavit required in case an employee or applicant for em- " ployment elects to exercise the right to reject the provisions of " this act. And the person administering such oath, in making " such affidavit, shall carefully read the notice and affidavit to such " person making such rejection, and shall explain that the purpose " of the notice is to bar such person from recovering compensation " in accordance with the schedule and terms of this act in the event " that he sustains an injury in the course of such employment. All " of which shall be shown by certificate of the person administer- " ing the oath herein contemplated. The Iowa industrial commis- " sioner, or any person acting for such commissioner, shall refuse " to file the notice and affidavit, unless such notice, affidavit and " certificate fully, and in detail, comply with the requirements " hereof. And if such rejection, affidavit and certificate is found " insufficient for any cause, it shall be returned by mail or otherwise " to the person who executed the instrument." There is no occa- sion for thus making difficult the exercise of the right by an em- ploye to signify his waiver of the provisions of the act and the difficult conditions only serve to prevent rejection as being im- possible for accomplishment. *Moreover the industrial commis- sioner or any one acting in his place has it within his power to veto the rejection.*

At the bottom of page 19 of said transcript begins section 26 which is in this language: "Section 26. If the employer and em- " ployé reach an agreement in regard to the compensation " under this act, a memorandum thereof shall be filed " with the Iowa industrial commissioner by the employer or em- " ployé, and unless the commissioner shall within twenty days, " notify the employer and employé of his disapproval of the agree- " ment by registered letter sent to their addresses as given in " the memorandum filed, the agreement shall stand as approved " and be enforcible for all purposes under the provisions of this act." The closing paragraph of section 18 of the act, at the bottom of page 17 of the Transcript of Record, is as follows: "No em-

" ploye or beneficiary shall have power to waive any of the provi-
" sions of this act in regard to the amount of compensation which
" may be payable to such employe or beneficiary hereunder to
" whom the act applies." Immediately following the above language is section 19 as follow: "Section 19. Any contract or " agreement made by an employer or his agent or attorney with " any employe or any other beneficiary of any claim under the pro-
" visions of this act within twelve (12) days after the injury shall " be presumed to be fraudulent."

Part III of the act (Transcript of Record, page 23) requires accident insurance in all cases and provides, as follows; "Sec. 44. " Subject to the approval of the Iowa industrial commissioner any " employer or group of employers may enter into or continue an " agreement with his or their workmen to provide a scheme of " compensation, benefit or insurance in lieu of the compensation " and insurance provided by this act; but such scheme shall in no " instance provide less than the benefits here secured nor vary the " period of compensation provided for disability or for death, or " the provisions of this act with respect to periodic payments, or " the per centage that such payments shall bear to weekly wages, " except that the sums required may be increased; provided fur-
" ther, that the approval of the Iowa industrial commissioner " shall be granted if the scheme provides for contribution by " workmen, only when it confers benefits in addition to those re-
" quired by this act commensurate with such contributions.

" Sec. 45. Whenever such scheme or plan is approved by the " Iowa industrial commissioner, he shall issue a certificate to that " effect, whereupon it shall be legal for such employer, or group of " employers, to contract with any or all of his or their workmen " to substitute such scheme or plan for the provisions of this act " during a period of time fixed by said amendment." The above provisions embrace the exceptions referred to in section 8 of the act (page 10 of "Transcript of Record") and with this in mind the full scope of said section may be comprehended. Said section is as follows; "Sec. 8. No contract, rule, regulation or device whatso-
" ever shall operate to relieve the employer in whole or in part, " from any liability created by this act except as herein provided." The right of the employe and employer to contract with each other is thus hampered with conditions and restrictions and finally the validity of such contracts as they may make, is entirely dependent upon the arbitrary will of the Iowa industrial commissioner unhampered by necessity for a hearing or showing that might influence his judgment. The employe is placed under the act which arbitrarily fixes the damages to which he is to be entitled in case

of accident and he can only preserve his rights to a jury trial and a hearing under due process of law by filing an affidavit from which it must appear that he has carefully abstained from even attempting to come to an agreement with his employer. The employe may be an electrical engineer, or a superintendent requiring the greatest skill and capacity, nevertheless, he must surrender into the keeping of the Iowa industrial commissioner the adjustment of relations with his employer and, in case of injury, neither he nor his beneficiary may, for 12 days make any contract of settlement with the employer, and, even at the expiration of that time limitation the whole matter of settlement is under control of the Iowa industrial commissioner, for, in section 3 (a) page 7 of Transcript of Record it is provided, *"Sec. 3, (a) The rights and remedies provided in "this act for an employe on account of an injury shall be exclusive "of all other rights and remedies of such employe, his personal or "legal representatives, dependents or next of kin, at common law "or otherwise on account of such injury."* Thus, the employe may neither negotiate nor contend in respect to the preservation of his rights or reparation of his wrongs—all this must be done by the Iowa industrial commissioner's rule of thumb. The right to contract and the sanctity of contract obligations are thus rendered nugatory.

3. The right of trial by jury and by due course of law is, as we have pointed out, guaranteed by the Ordinance of 1787 and by successive acts of congress, and finally, consistently therewith, by the Fourteenth Amendment of the Federal constitution. These rights are denied by the statute under present consideration. Part II of that act (page 18 Transcript of Record) provides for the appointment by the governor of what is designated as the Iowa industrial commissioner. In case of disagreement between an employer and an injured employe, under section 27 of the act (page 20 of transcript) either party may notify the said industrial commissioner, who shall thereupon call for the formation of an arbitration committee consisting of three persons, one of whom shall be the industrial commissioner, who shall act as chairman. By section 30 of the act, Transcript page 20, it is provided that this committee shall make such inquiries and investigations as *it* shall deem necessary— the hearings to be had where the injury occurred and the report of the committee to be filed with the said industrial commissioner. Section 33 of the act (page 21 Transcript of Record) provides if a claim for review is filed, the industrial commissioner (not the arbitration committee) shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto *"and may "revise the decision of the committee in whole or in part,"* or may refer the matter back to the committee for further findings of fact

and shall file its decision with the records of the proceedings and notify the parties thereof. Section 34 of the act, Transcript of Record, page 21, provides for an automatic judgment on filing the record of the proceedings in the district court of the county in which the injury occurred. It is incredible that such a complete denial of the right of trial by jury without due process of law, should ever have been sanctioned by a legislative body and approved by the governor of a state, as is presented by this procedure the climax of which is embodied in section 34 of the act, the language of which, on page 21 Transcript of Record, is as follows; "Sec. 34. "Any party in interest may present certified copy of an order or "decision of the commissioner, or a decision of an arbitration com- "mittee from which no claim for review has been filed within the "time allowed therefor, or a memorandum of agreement approved "by the commissioner, and all papers in connection therewith, to "the district court of the county in which the injury occurred, "whereupon said court shall render a decree in accordance there- "with and notify the parties. Such decree shall have the same "effect and in all proceedings in relation thereto shall thereafter "be the same as though rendered in a suit duly heard and de- "termined by said court, except that there shall be no appeal there- "from on questions of fact, or where the decree is based upon "an order or decision of the commissioner which has not been "presented to the court within ten days after the notice of the fil- "ing thereof by the commissioner. Upon the presentation to the "court of a certified copy of a decision of the industrial commis- "sioner ending, diminishing or increasing a weekly payment un- "der the provisions of this act, the court shall revoke or modify "the decree to conform to such decision." It is provided in the section immediately following that above quoted that the commissioner on request of an employer or employe may review any payment to be made under the act and on such review such payment may be ended, diminished or increased subject to the maximum or minimum amounts provided for in the act *if the commissioner finds the conditions of the employe warrants such action.*

This scheme does away with all right to a jury trial and, indeed, limits the functions of the court to the registration and enforcement of mandates of the Iowa industrial commissioner and even this clerical function is withheld from Federal courts.

The author of the bill realized the fact that waiver of jury trial under due process of law could not arbitrarily and avowedly be consummated in view of the guaranties heretofore mentioned, therefore he had resort to cunningly devised alternatives so impossible of compliance therewith and so drastic in their nature,

that assent to be governed by the act would perforce be given as the lesser of two evils. The affidavit exacted of the employe in connection with his notice of rejection and the power of the industrial commissioner to reject the same, thus nullifying the notice of the employe's rejection have already been considered.

The employer cannot effectively reject the terms and provisions of the act if the employe likewise rejects for section 5 of the act (Transcript of Record, page 9) provides, as follows: "Sec. " 5. Where the employer and employe elect to reject the terms, " conditions and provisions of this act, the liability of the employer " shall be the same as though the employe had not rejected the " terms, conditions and provisions thereof." In other words if the employer gives notice that he rejects the act, the employe, by also rejecting, renders the liability of the employer the same as though the employe had not rejected—that is to say, the parties are in the same relation to the act as though the employe had accepted its terms and provisions and the employer had rejected them. Let us now consider what consequences such relative positions entail. It is provided by section 1 commencing at subdivision (4) of Transcript of Record on page 6, as follows; "(4) In " actions by an employe against an employer for personal injury " sustained arising out of and in the course of the employment " where the employer has elected to reject the provisions of this " act, it shall be presumed that the injury to the employe was the " direct result and growing out of the negligence of the employer; " and that such negligence was a proximate cause of the injury; " and in such cases the burden of proof shall rest upon the employer " to rebut the presumption of negligence." These results are entailed upon the employer if he rejects and the employe does not reject but if both reject it results under said section 5, page 9, Transcript of Record, that the employer incurs the above penalties at any rate. But the employer may not reject the terms and conditions of the act in so many words and thus retain the right of jury trial under due process of law but his rejection must be evidenced by a notice of such rejection wherein he "elects to pay dam- " ages for personal injuries received by such employe under the " common law and statutes of this state modified by sub-divisions " one, two, three and four of section one, chapter 147 of the acts " of the 35 General Assembly and acts amendatory thereto." See page 6 of Transcript of Record. The chapter referred to as 147 is the law under consideration. We have quoted that part of subdivision 4 pertinent to this discussion and without now repeating merely refer to it. Subdivisions one, two and three and the necessary introductory (c) are in this language; "(c) An employer

" having the right under the provisions of this act to elect to reject " the terms, conditions and provisions thereof and in such case " exercises the right in the manner and form by this act provided, " such employer shall not escape liability for personal injury sus- " tained by an employe of such employer when the injury arises out " of and in the usual course of the employment because;

" (1) The employe assumed the risks inherent in or incidental " to or arising out of his or her employment; or the risks arising " from the failure of the employer to provide and maintain a rea- " sonably safe place to work, or the risks arising from the failure " of the employer to furnish reasonably safe tools or appliances, or " because the employer exercised reasonable care in selecting rea- " sonably competent employes in the business; (2) That the in- " jury was caused by the negligence of the co-employe; (3) That " the employe was negligent unless and except it shall appear that " such negligence was willful and with intent to cause the injury, " or the result of intoxication on the part of injured party." Thus it is seen that where an employer has given the notice necessary to evidence his rejection of the terms and conditions of the act he does so by stating in said notice that in a trial by jury and in due course of law he agrees to waive the defenses of assumption of risk, contributory negligence and the negligence and that (under subdivision 4), it shall be presumed against him that the injury was the direct result and growing out of his negligence which was the proximate cause of the injury and he must assume the burden of meeting and disposing of these presumptions. Burdened with such conditions his choice to rely upon the guaranteed right of trial by jury by due process of law cannot be said to be freely exercised as under the laws and constitutional provisions heretofore referred to he has the right to exercise it.

4. But this sort of duress was not enough; there was set a trap for the unwary employer. Part III (page 23, Transcript of Record) provides that there shall be insurance in all cases against accidents to employes and in section 42 so providing, there is this language; "And if such employer refuses or neglects to comply " with this section he shall be liable in case of injury to any work- " man in his employ under part one (1) of this act." In part one are the drastic provisions of subdivisions one, two, three and four of section 1 above quoted. There is all through this act evidenced an intention to defeat the right of a litigant to insist upon his constitutional rights by a free expression of that choice of remedies. It was because there was permitted free untrammeled choice that employers' liability legislation was held constitutional in Opinions of Justices, 209 Mass. 607, 96 N. E. 308; *Sexton v. Tel. Co.*, (N.

J.) 86 Atl. 451, 455; *Borgnis v. Falk Co.*, 144 Wis. 327, 133 N. W. 209 and in other courts wherein the question of constitutionality has arisen. Attempts by false pretenses to accomplish one result by such chicanery as this act evinces and relies upon were frowned upon by this court in *Henderson v. Mayor*, 92 U. S. 259, 267; *Yick Wo v. Hopkins*, 118 U. S. 356; *Chy Lung v. Freeman*, 92 U. S. 275; *Ex parte Viginia*, 100 U. S. 339; *Neal v. Delaware*, 103 U. S. 370; *Soon Hung v. Crowley*, 113 U. S. 803; In *Guinn and Beal v. United States*, decided June 21, 1915, and to be reported in 238 U. S. we find this apposite language; "On the very face of things it is "clear that the United States disclaims the gloss put upon its con- "tentions by limiting them to the propositions we have hitherto "pointed out; since it rests the contention which it makes as to "the assailed provision of the suffrage amendment solely upon the "ground that it involves an unmistakable, although it may be a "somewhat disguised, refusal to give effect to the prohibitions of "the Fifteenth Amendment by creating a standard, which it is "repeated, but calls into life the very conditions which that "Amendment was adopted to destroy and which it had destroyed." We have confidence the above considerations effectually meet the grounds of the motion to dismiss, "first, that said bill of "complaint fails to allege facts sufficient to constitute a cause of "action in favor of the plaintiff; second, that it appears on the face "of said bill of complaint that the statements and allegations "therein made do not entitle the plaintiff to the relief demanded or "to any other relief whatsoever; third, that said bill of complaint "fails to show that chapter 147, acts of thirty-fifth general as- "sembly of Iowa, copy of which is attached to said bill of com- "plaint, violates any provision of the constitution of the United "States or of the constitution of the state of Iowa or that the same "is invalid or unconstitutional for any reason whatever." (The motion to dismiss is on pages 25 and 30, Transcript of Record.)

5. The other grounds of said motion scarcely deserve the pass- ing notice we shall give them. They are "(a) complainant does "not show by said bill of complaint that he will suffer in the sum "of three thousand dollars, or in any particular amount whatever." The allegation in the bill of complaint is "that in this action there "is involved, exclusive of interest and costs, more than three "thousand dollars." Transcript of Record page 2. This is in compliance with the statute defining the jurisdiction of the United States district court—more than this can not be required. Again, "(b). It affirmatively appears from said bill of complaint that "complainant has elected to reject the terms of the act providing "for a schedule of compensation for injured employees and hence

"complainant can only complain of the fact that the act in question "deprives him of certain common law defenses." If Mr. Hawkins, the plaintiff, had given notice that he accepted the provisions of the act he could not complain of what he had assented to. If the ground (b) is well taken it results that Mr. Hawkins having rejected can not complain—that is to say whether he rejected or not he is in no position to complain. This is perfectly consonant with the theory of the act, that escape from its provisions must be rendered impossible. We submit that the only course open to Mr. Hawkins is to contest the validity of the act and that his refusal to accept its provisions cannot be tortured into acquiescence therein. The same vicious theory is advanced in the next ground; "(c) "Having elected not to come under the terms and provisions of "the act, complainant is not denied due process or the equal protec- "tion of the laws as guaranteed by the Fourteenth Amendment, "nor is he deprived of any other right guaranteed to him by the "Fourteenth Amendment, or any provision of the constitution of "the United States." In other words it follows from his rejection that he forfeits the right to complain of the withdrawal of the protection of the laws as guaranteed by the Fourteenth Amendment and any other provision of the constitution of the United States. An act that requires for its support such an argument can have but little merit.

The fifth and final ground of the motion to dismiss is as follows; "Fifth. This action should be dismissed because every con- "stitutional question which complainant has raised in his bill of "complaint is governed exclusively by whether or not the act "conforms to the constitution and fundamental law of the state "of Iowa." This is a fitting climax of the scheme to deny due process of law—elaboration could not make more clear that fact.

6. It will be found that appellant and appellee do not argue the same propositions. The argument of appellee has heretofore been, and hence we assume will be, based upon the desirability of avoiding the delay and expense of a law suit in case of injury to an employe. Appellant does not dissent as to the desirability of such avoidance but insists it must be without the duress and compulsion on which is based the act under consideration. It is against the coercion attempted thereby that appellant invokes the protection of the constitution and the laws of the land.

Respectfully submitted,

ROBERT RYAN,
JAMES P. HEWITT AND
R. & F. G. RYAN,
Attorneys for Appellant.

Brief of Appellee on Re-argument

IN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. [redacted] 35

J. C. HAWKINS, *Appellant,*

vs.

JOHN L. BLEAKLY, Auditor of the State of Iowa, AND WARREN GARST, Iowa Industrial Commissioner, *Appellees.*

FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

ROBERT RYAN, JAMES P. HEWITT AND R. & F. G. RYAN, Des Moines, Iowa, *Attorneys for Appellant.*

GEORGE COSSON, Attorney General, Des Moines, Iowa, HENRY E. SAMPSON, Assistant Attorney General, Des Moines, Iowa, AND JOHN T. CLARKSON, Albia, Iowa, *Attorneys for Appellees.*

SUBJECT INDEX

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Supreme Court of the United States

STATEMENT OF THE CASE.

This action was brought by J. C. Hawkins, the appellant, in the United States District Court for the Southern District of Iowa, against John L. Bleakly, then auditor of state, and Warren Garst, then Iowa industrial commissioner, to restrain the enforcement of the Iowa workmen's compensation act (sections 2477-m to 2477-m51 inclusive, supplement to the code, 1913), upon the ground that it was repugnant to the Fourteenth Amendment to the Constitution of the United States. Appellees filed a motion to dismiss, copy of which is set out in transcript of record, page 25, based upon five specific grounds, which motion to dismiss was sustained by the United States District Court. A carefully considered opinion was prepared by the trial court, copy of which is set out in full in the appendix to this argument. This appeal was thereupon promptly perfected by plaintiff appellant.

J. C. Hawkins, the appellant herein, is a small employer, located at Newton, Iowa, and as soon as the Iowa compensation law went into effect he exercised his right under said statute to reject the compensation features of the act and, therefore, under the express provisions of the statute, he is in identically the same situation as though the Iowa workmen's compensation act had not been passed, with the exception that, having voluntarily rejected the compensation features of the act, he cannot now rely upon what is generally known as the three common law defenses and he now has the burden of proving non-negligence.

THREE IMPORTANT FACTS.

There are three important facts in this case which should not be lost sight of in the consideration of this matter. They distinguish the Iowa case from the other compensation cases now pending before the court. These facts are:

1. The Iowa statute is elective or optional—not the compulsory type.

2. The appellant is an employer—not an employe; he is an employer who has rejected the compensation features of the act—not one who has elected to avail himself of its privileges; he is an employer that is operating under the employers' liability law of Iowa.

3. The appellant has exercised the right which he has under the workmen's compenastion act to reject its provisions and, therefore, retains his right to contract at liberty and his right to submit all differences with his employes to a jury and has all the other rights guaranteed to him by the Fourteenth Amendment.

Appellant in his bill of complaint made a general attack upon the Iowa statute, criticising its form and general purpose, but the only constitutional objection urged by appellant is that it violates the Fourteenth Amendment to the Constitution of the United States. In a general way, appellant states that, by reason of the act under consideration, his privileges and immunities are abridged, his property and rights are taken without due process of law, he does not have the equal protection of the law and that his contracts are impaired, but fails to state in any specific manner why such is the case. In appellant's brief the only constitutional questions urged with special

emphasis are, (a) that the statute interfered with his freedom of contract, and (b) that it deprived him of the right of trial by jury.

From an examination of appellant's brief it would seem that the only constitutional objections requiring consideration by the appellee can best be discussed under the three following heads:

I.

The Iowa statute does not violate the Fourteenth Amendment by depriving appellant of right of trial by jury.

II.

The Iowa statute does not violate the Fourteenth Amendment by interfering with appellant's liberty of contract.

III.

The Iowa statute does not violate the Fourteenth Amendment in any other way or for any other reason.

LEGAL PROPOSITIONS AND BRIEF.

There are three possible theories under which appellee can successfully meet the propositions set forth by appellant and we believe it will make for clearness to outline at the beginning these different features.

First Theory.—Appellant cannot complain of another's grievances; that is, he, being an employer, cannot complain in the interest of the employe, or, having rejected the act, cannot complain on behalf of those under the act.

The appellant is an employer, while his objections to this statute are based upon supposed wrongs to the employe. The employes of appellant are raising no objection to the law and, under the authorities of this court, appellant is in no position to urge the objections set forth in his bill of complaint.

It has become elementary that the appellant can complain only of the injury which he himself may sustain and may not strike down a statute as violative of the federal constitution because of its possible injury to some one else.

Standard Stock Food Co. v. Wright, 225 U. S., 540 at 550.

Employer cannot object for employe.

Mr. Justice Day, speaking for the court in the case of *Jeffrey Mfg. Co. v. Blagg*, 235 U. S., 571, at 576, said concerning this matter.

> "Much of the present argument is based upon the supposed wrongs to the employe, and the alleged injustice and arbitrary character of the legislation here involved as it concerns him alone, contrasting an employe in a shop with five employes with those having less. No employe is complaining of this act in this case. The argument based upon such discrimination, so far as it affects employes by themselves considered, cannot be decisive; for it is the well settled rule of this court that it only hears objections to the constitutionality of laws from those who are themselves affected by its alledged unconstitutionality of the feature complained of.

Southern Railway Co. v. King, 217 U. S., 524, 534;

Engel v. O'Malley, 219 U. S., 128, 135;

Standard Stock Food Co. v. Wright, 225 U. S., 540, 550;

Yazoo & Mississippi Valley R. R. v. Jackson Vinegar Co., 226 U. S., 217, 219;

Rosenthal v. New York, 226 U. S., 260, 271;

Darnell v. Indiana, 226 U. S., 390, 398;

Plymouth Coal Co. v. Pennsylvania, 232 U. S., 531, 544;

Missouri, Kansas & Texas Ry. v. Cade, 233 U. S., 642, 648."

The same question was before the court in the case of *Standard Stock Food Co. v. Wright,* 225 U. S., 540, wherein Mr. Justice Hughes said:

> "The case in this aspect falls within the established rule that 'one who would strike down a state statute as violative of the Federal Constitution must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstituional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution.'
>
> *Southern Ry. Co. v. King,* 217 U. S., 524, 534;
>
> *Tyler v. The Judges,* 179 U. S., 405;
>
> *Turpin v. Lemon,* 187 U. S., 51, 60;
>
> *Hooker v. Burr,* 194 U. S., 415;
>
> *Hatch v. Reardon,* 204 U. S., 152, 160;
>
> *Collins v. Texas,* 223 U. S., 288, 295."

Employer Who Has Rejected Cannot Complain For One Under the Law.

The rule laid down in the cases just referred to is also applicable to the appellant for the further reason that he has rejected the compensation features of the Iowa statute and is not affected by its provisions. He cannot, therefore, urge in this court those objections which might properly be urged by employers who had not rejected the provisions of the act and who were, for that reason, bound by its provisions.

As was said by this court in the case of *Jeffrey Mfg. Co. v. Blagg*, 235 U. S., 571, the employer who has rejected the act cannot be heard to urge a grievance of employers who have availed themselves of the workmen's compensation features of the act.

The Iowa statute, therefore, takes away none of appellant's constitutional rights and he is in no position at this time to complain for and on behalf of others who may elect to be governed by its provisions.

Quong Wing v. Kirkendall, 223 U. S., 59.

Even though the application of the statute in the particular case may violate organic law, it may not be unconstitutional as framed when limited to its proper applicotion. As was said in the case of *Dutton v. Priest*, 67 Fla., 370, an attack upon the constitutionality of a statute will not be sustained on the ground that it may be so construed as to invade private rights secured by the Constitution and also that *he who makes the attack must show that in the case he presents the effect of applying the statute is to deprive him of a constitutional right.*

The employer cannot be heard to urge a grievance of the employe in attacking a compensation act.

Jensen v. Railway Co., 215 N. Y., 514;

Jeffrey Mfg. Co. v. Blagg, 235 U. S., 571.

We, therefore, respectfully contend that this court should not strike down as violative of the Federal Constitution the Iowa compensation act on objections filed by this appellant since he is not injured by the matters of which he complains.

Second Theory.—The act being optional and appellant having rejected its provisions, he has all of his constitutional rights and has naught for which to complain.

The second theory is based upon the fact that the Iowa workmen's compensation act is elective and becomes effective only upon consent of both parties to the employment contract (sec. 2477-m, supplement to the code, 1913.)

Hunter v. C. C. C. Co., 154 N. W. (Iowa), 1037;

Opinion of Justices, 209 Mass., 607;

Borgnis v. Falk, 147 Wis., 337;

Sexton v. Newark Tel. Co., 46 Atl. (N. J.), 451.

The appellant exercised his right under the statute to reject the compensation features of the act. He stated in his bill of complaint that "your orator further says your orator has never consented to become subject as an employer to any of the provisions of this act, but that he has, at all times, and

now continues, as he will in the future, to reject unconditionally and absolutely the obligations and provisions of this act." (See transcript of record, page 3.) By this voluntary action of the appellant he is, by express provision of the statute now under consideration, unaffected by the provisions of the Iowa workmen's compensation act, except that he has been deprived of the three common law defenses. Appellant still has his right to make contracts of employment, to refuse to carry indemnity insurance, to have differences with his employes settled in regularly organized courts, to have all questions of fact submitted to a jury, and has no ground whatever to contend that his rights guaranteed him by the Fourteenth Amendment to the constitution are being taken from him by virtue of the Iowa compensation act, the provisions of which he has rejected. There is nothing in the Iowa statute involved in this litigation which compels appellant to become subject to its compensation features or which compels an employe to waive his right of action at common law. In his bill of complaint appellant complains of certain inconveniences to the *employe* when the act is rejected, but these conditions do not constitute legally the compulsion or the deprivation of fundamental rights, and especially where the employer is objecting in behalf of the employe. (Opinion of Justices, 209 Mass., 607.)

The same subject has been before a number of state courts which have upheld the constitutionality of compensation acts. (See cases in Index.) In *Jeffrey v. Blagg*, 235 U. S., 571, dealing with the validity of the Ohio compensation act, the court said: "No employer is obliged to go into this plan. He may stay out of it altogether if he will." The supreme court of Ohio has upheld the Ohio act

on the ground that it is purely optional and voluntary both as to the employes and employer. Substantially this is affirmed in *Re Opinion of Justices,* 209 Mass., 607, as to a statute substantially like the one at bar. It is therein said that so long as it is elective, an act, requiring an employer to waive right to sue at common law, and accept compensation provided in the act, violates no constitutional requirement. The same is the holding of the supreme court of Wisconsin in *Mellen v. Industrial Commissioners,* 154 Wis., 114. The *Deibeikis Case,* 261 Ill., 454, holds that the requirements to arbitrate being elective is not an unconstitutional delegation of judicial power to the arbitrator, and parties may validly agree to submit to arbitrators other than the regularly organized court. The *Borgnis Case,* 147 Wis., 337, refused to accede to the theory that the withdrawal of certain offenses coerces the employer and that his acceptance coerces the employe through fear of discharge.

Appellant seems to make some point of the fact that there is an element of coercion in the law, but upon this proposition it was said by Justice Salinger, in the case of *Hunter v. Colfax Consolidated Coal Co.,* 154 N. W. (Iowa), 1037, that:

> "One who is at liberty to do or not to do a thing can always say, I will not do what I can refuse to do, with or without reason, unless you do what I demand. There can be no coercion in the sight of the law effectuated by doing or not doing what one has the absolute right to do or not to do, no matter what terms are attached to doing or refraining. One who has absolute right to do or not to do a thing can attach to his doing or not doing any condition, no mat-

ter how unreasonable or arbitrary. The remedy is refusal to accede to the unreasonable demand. To threaten one with suit on a note and resulting costs unless something asked be done is not duress if the note is confessed and due. One having a house to lease may decline to lease it unless the proposing tenant will agree to stay away from church, or to eat nothing but tomatoes—the remedy is to get another house.

"Constitutional rights can be waived. That such waiver itself works a violation of the Constitution where the inducement to waive does nothing prohibited by the Constitution is inconceivable. The only penalty for nonacceptance of this act is the infliction of what the Legislature may do in any event. This is not invidious compulsion."

The statute under consideration compels the doing of nothing and the acceptance of nothing unless its provisions be voluntarily accepted. In terms it leaves the parties free whether to accept or reject. It is true that the appellant has certain rights guaranteed to him by the Fourteenth Amendment to the constitution, but these rights can be waived by him if he so desires, and it is appellees' contention that by the voluntary acceptance of the compensation features of the act those governed by its provisions thereby waive the right to object to its provisions.

THE COMMON LAW DEFENSES.

Appellant having rejected the compensation features of the act is in exactly the same condition as he was before the law was enacted, except as to the common law defenses previously referred to. These defenses are not constitutional rights but have been created from time to time by statutes or by judicial decisions, and the courts have repeatedly held that

they can be lawfully taken away by the legislature at any time.

That no one has a vested right in the rules of the common law has been established beyond controversy.

Munn v. Illinois, 94 U. S., 113;

City of Chicago v. Sturges, 222 U. S., 213;

Mondou v. N. Y., N. H. & H. R. Co., 221 Ill., 230;

Bennett v. Hargis, 1 Nebr., 419.

We think the *Jeffrey Case*, 235 U. S., 571, is at least authority for the proposition that abolishing such defenses as contributory negligence, assumed risk, and the negligence of fellow servants, only where the employer, being free to accept or reject, rejects, violates no constitutional rights.

Taking away the defense that the injury is due to the negligence of a fellow servant, which is done by the act, is not objectionable as illegal classification, nor in any way violative of constitutional rights. *Railway v. Mackey*, 127 U. S., 205, *Railway v. Turnipseed*, 219 U. S., 35; *Watson v. Railway* (C. C.), 169 Fed., 943.

As to the elimination by the act of various defenses resting on risks assumed by the employe the taking of such defenses has been generally held to be within the power of the Legislature. See *Railway v. Bailey*, 53 Tex., Civ. App. 295, 115 S. W., 601; *Railway v. Alexander* (Tex. Civ. App.), 117 S. W., 927.

It has been said of the defenses of assumed risk, and that the injury was the act of a fellow servant, that, having been evolved by the courts, they may

properly be abrogated by the Legislature. *Borgnis' Case,* 147 Wis., 327; *Jensen's Case,* 215 N. Y., 514. And the Supreme Court of the United States has held, in *Mondou's Case,* 223 U. S., 1, that such rules as this are common-law rules, and no one has a vested interest in such rules. See, also, *Creamer's Case,* 85 Ohio St., 349, and In re Opinion of Justices (Mass.) *supra,* and *State v. Clausen* (Wash), *supra. Hunter v. Colfax Consolidated Coal Co.,* 154 N. W. (Iowa), at 1066.

In all those cases which have upheld the constitutionality of elective workmen's compensation acts (for citations see index), the courts have held, without exception, that the legislature may abolish the defenses of (a) fellow servant, (b) contributory negligence, and (c) assumed risk.

Third Theory.—The Iowa Workmen's Compensation Act is Constitutional in all its parts.

The Iowa workmen's compensation act is constitutional in all its parts. Appellant quotes the Fourteenth Amendment and then complains rather loosely that the act under consideration runs counter to said amendment. In his bill of complaint he mentions the phrases, "due process of law," "equal protection of law," "privileges and immunities," etc., but does not specify how or in what manner the statute violates this constitutional provision. Appellant does, however, lay some emphasis on the fact that the statute deprives him of the right of trial by jury, and also that it interferes with his liberty of contract, and hence appellees will discuss this division of the argument under the following titles:

I.

The Iowa statute does not violate the Fourteenth Amendment by depriving appellant of right of trial by jury.

II.

The Lowa statute does not violate the Fourteenth Amendment by interfering with appellant's liberty of contract.

III.

The Lowa statute does not violate the Fourteenth Amendment in any other way or for any other reason.

The Iowa Cases.

The trial court in deciding the case at bar adversely to appellant prepared a carefully considered opinion which, for the convenience of this court, is printed in the appendix to this argument. The opinion discusses the reason for legislation of this character and we respectfully ask the court to give this opinion careful consideration. (See *Hawkins v. Bleakly*, 220 Fed., 378.)

The constitutionality of the Iowa workmen's compensation act has been passed upon by the supreme court of that state in the case of *Hunter v. Colfax Consolidated Coal Co.*, 154 N. W. (Iowa), 1037, in which all of the constitutional objections now being urged in this court were carefully considered and decided adversely to the position now being urged by appellant. In that case the supreme court of Iowa decided, among other things, that the Iowa workmen's compensation act was passed as a proper exercise of the police power of the state; that in determining the constitutionality of the statute all doubt should be resolved in favor of such legisla-

tive action; that only those parties who are aggrieved by this legislation can complain of its unconstitutionality; that no fundamental rights are disturbed by the common law defenses eliminated or modified nor by changes made in the presumptions of fact; that the statute was not unduly coercive; that the statute does not work an improper delegation of judicial power or oust the court of its proper jurisdiction; that where the act is rejected the courts are in no sense deprived of jurisdiction although the procedure before them is changed and certain defenses are eliminated; that the act is not unconstitutional as impairing the obligation of existing contracts; that the statutory provisions complained of in this case are mere guards against contracts to reduce the employer's liability and that, as such, they are not impairments of the right to contract but merely a method of preventing evasions of contract obligations; that the Iowa statute does not violate the guaranties of due process of law and of equal protection of the laws, neither does it effect a wrongful abridgement of the privileges and immunities of citizenship; that the statute now under consideration is constitutional in all of its parts.

This case interprets the several provisions of the Iowa statute now under consideration and, as interpreted, is clearly constitutional.

I.

The Iowa statute does not violate the Fourteenth Amendment by depriving appellant of right of trial by jury.

Appellant contends that the statute under consideration offends against the Fourteenth Amend-

ment of the constitution of the United States in that it deprives him of the right of trial by jury, but appellees contend that under the authorities such is not true.

It is obvious that one of the main purposes of a compensation law is to avoid, so far as possible, the delay and expense incident to ordinary court proceedings for the recovery of damages for personal injuries. It has, therefore, seemed wise to the legislature to include in the compensation law, under consideration, provision for the abitration of the differences which might arise between employer and employe who come under the act.

The statutory provisions for settling all differences between employer and employe under the Iowa workmen's compensation act may be briefly summarized as follows:

If the employer and employe reach an agreement in regard to the compensation under the act a memoranda thereof is filed with the commissioner and unless he, within twenty days, disapproves of same, said agreement stands approved and is enforcible for all purposes under the provisions of the act. (Section 2477-m 25.) If the parties in interest fail to reach an agreement in regard to compensation, either party may notify the commissioner, who thereupon forms a committee of arbitration of three, of which the commissioner is one,—the other two are named by the two parties respectively. (Section 2477-m 26.) The arbitration committee convenes at the place where the injury was sustained and makes inquiries and investigations and hears evidence. The decision of the committee, together with a statement of evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions coming before it are

filed with the commissioner. Unless a claim for a review is filed by either party within five days, the decision becomes enforcible under the provisions of the act. (Section 2477-m29.) The committee of arbitration has power to subpoena witnesses, administer oaths, examine records bearing upon questions in dispute. (Section 2477-m24.) If a claim for review is filed, the commissioner shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or refer the matter back to the committee for further findings of fact, and he shall file his decision with a record of the proceedings and notify the parties. (Section 2477-m32.)

The party in interest may present certified copy of the order of the commissioner or decision of the committee from which no claim for review is made within the time allowed for such presentation, or present a memoranda of agreement approved by the commissioner, and all papers in connection with same to the district court, whereupon said court shall render decree in accordance therewith and notify the parties. Such decree shall have the same effect in all proceedings in relation thereto and shall thereafter be the same as though rendered in a suit duly heard and determined by said court. (Section 2477-m33.) Process and procedure under the act shall be as summary as reasonably may be. (Section 2477-m24.) See recent case of *In re Employers' Liability Insurance Corporation*, 102 N. E. (Mass.), 677, at 699.

The right of trial by jury, as guaranteed by the federal constitution, is not denied by the Iowa statute under consideration since the provisions of the federal constitution do not guarantee a trial by a

jury in a civil action in a state court. The seventh amendment to the constitution touching the right of trial by jury applies only to the federal statutes.

Edwards v. Elliott, 21 Wallace, 557;

Pearson v. Yewdall, 95 U. S., 294;

Baron v. Baltimore, 7 Peters, 247;

Twitchess v. Com., 7 Wallace, 326;

Livingston v. Moore, 7 Peters, 551;

State v. McDowell, 32 L. R. A. (Wash.), (N. S.), 414.

Walker v. Sauvinet, 92 U. S., 90;

Spies v. Illinois, 123 U. S., 131;

Maxwell v. Dow, 176 U. S., 594.

A clear statement of the principle governing this matter is found in the case of *State v. Clausen,* 65 Wash., 165, at 207, in which the supreme court of that state said:

"The constitution does not undertake to define what shall constitute a cause of action, nor to prohibit the legislature from so doing. The right of trial by jury accorded by the constitution, as applicable to civil cases, is incident only to causes of action recognized by law. The act here in question takes away the cause of action, on the one hand, and the ground of defense on the other, and merges both in a statutory indemnity, fixed and certain. If the power to do away with a cause of action in any case exists at all, in the exercise of the police power of the state, then the right of trial by jury is thereafter no longer involved in such cases. The right of jury trial being incidental to the right of action, to de-

stroy the one is to leave the other nothing upon which to operate."

The position of the Washington court as just quoted is the one uniformly adopted by the state courts in passing upon the constitutionality of compensation acts, and we refer particularly to the following:

Hunter v. Colfax Consolidated Coal Co., 154 N. W. (Iowa), 1037;

Stoll v. Pac. Coast Steamship Co., 205 Fed., 169;

State v. Mt. Timber Co., 75 Wash., 581;

Cunningham v. N. W. Improvement Co., 44 Mont., 189;

State v. Creamer, 85 Ohio St., 349;

Sexton v. Newark Tel Co., 86 Atl. (N. J.), 451.

Mondou v. N. Y., N. H. & H. R. Co., 223 U. S., 1;

Martin v. Pittsburgh & Lake Erie R. R., 203 U. S., 284;

Young v. Duncan, 106 N. E. (Mass.), 1.

Attention should again be called to the fact that the Iowa statute is elective and that the appellant has rejected its compensation features. He may therefore have all differences with his employes settled in regularly organized courts and have all questions of fact submitted to a jury, and he is in no position to contend that his right of trial by a jury is denied or that his property is being taken without due process of law.

But even if appellant had not rejected the act but were operating under its provisions, yet he could not

successfully contend that the law is unconstitutional since it has been universally held that compensation acts are not unconstitutional, because no jury trial is provided for in them.

Sexton v. Tel. Co., 84 N. J. L., 85;

Jensen's Case, 215 N. Y., 514;

State v. Clausen, 65 Wash., 156;

Deibeikis' Case, 261 Ill., 454;

Lumber Co. v. Commission, 154 Wis., 114;

In re State Journal Co., 161 Ky., 562.

The waiver of trial by jury and by due process of law must be by voluntary assent, but it does not follow that constitutional guaranties must be "expressly" waived by the party thereby affected.

Timber Co. Case, 75 Wash., 581;

Green v. Smith, 111 Iowa, 183;

In re Printing Co., 156 Iowa, 282;

Porter v. Butterfield, 116 Iowa, 725;

Cunningham's Case, 44 Mont., 180.

This court has repeatedly held that trial by jury might be waived. (*Hallinger v. Davis*, 146 U. S., 314.) It is not necessary in suits at common law that they should be tried by a jury. (*Walker v. Sauvinet*, 92 U. S., 90.) It was said by the court in the case of *Musco v. United Surety Co.*, 196 N. Y., 459, that "It is well settled that an individual may waive even constitutional provisions, if for his benefit, when no question of public money or public morals is involved." (*Mayor of N. Y. v. Manhattan Ry. Co.*,

143 N. Y., 1; Cooley's Constitutional Limitations (7th Ed.), 250.)

We believe that ultimately compensation acts in a compulsory form will be sustained by the courts as a legitimate exercise of police power, and that the courts will construe that section of our bill of rights guaranteeing trial by jury as heretofore enjoyed with reference to the sovereign exercise of the police power of the state as required by modern industrial and social conditions.

If the law is a progessive thing and may be made to fit modern industrial and socitl conditions, and if questions of public health, safety and general welfare are not to be limited to those which were familiar at the time the constitutional limitations were imposed, and if there are no vested rights in the rules of the common law, and if old defenses may be abolished (all of which the courts now uniformly hold), we seriously doubt that the legislature may not in the exercise of the sovereign police power of the state withdraw certain cases from that class in which at common law a jury trial was awarded, and in the interest of the whole people place them within that class in which a more summary proceeding is authorized for the general good. If the declarations of the legislature of the state of Washington in the preamble of its workmen's compensation law were justified when it said that the whole subject was withdrawn from private controversy, and the legislature thus indicates that in its opinion such a new system of procedure with reference to industrial accidents is "put forth in aid of what is held by the prevailing morality or strong and preponderate opinion to be greatly and immediately necessary to the public welfare" (*Noble v. Haskell*, 219 U. S., 104), can the court say at one and the same time

that such legislation is due process of law, but that it amounts to an unconstitutional invasion of the fundamental right of trial by jury. May it not be said, as in the Noble case, that "there are more powerful considerations on the other side?" (See *Camfield v. U. S.*, 167 U. S., 518.)

There must be an action at law as contra distinguished from a special proceeding and a showing of fact joined therein upon the pleadings before a jury trial can be claimed as a constitutional right.

> *Koppicus vs. Capitol Com'rs*, 16 Calif., 284;
> *People vs. Hill*, 163 Ill., 186.

The legislature has the constitutional right to provide for the execution and administration of the law without resort to the courts.

> *Davison vs. Walla Walla*, 21 L. R. A., N. S. (Wash.), 454, and cases cited.

The statute under consideration does not by its terms violate any right of trial by jury but simply furnishes a means whereby an injured workman and his employer may by mutual agreement dispense with intervention of a jury to ascertain the compensation which the workman ought to have and the means thus afforded by the statute may be properly and voluntarily chosen by both parties.

We respectfully submit that the statute now under consideration is not unconstitutional as depriving appellant of the right of trial by jury.

II.

The Iowa statute does not violate the Fourteenth amendment by interfering with appellant's liberty of contract.

Appellant in his argument says, "the first obnoxious feature of the act under consideration which we shall take up is that which interferes with and affects private contracts," but he fails to specify definitely the particular provisions of which he complains. Appellees presume that he no doubt refers to those provisions found in sections 2477-m2 (a), 2477-m7, 2477-m12 and 2477-m17, supplement to the code, 1913. The first statutory provisions limit the right and remedies of employes who choose to avail themselves of the compensation features to those fixed in the compensation act. The second provision provides that no contract, rule, regulation or device shall operate to relieve the employer who has elected to operate under its provisions from any liability created by said compensation act. The third provision provides that the compensation fixed in the act shall be the measure of the responsibility of the employer who has chosen to operate under its provisions and that such compensation shall not be in any wise reduced by contribution from employes. The fourth provision provides that no employe, operating under the act, shall have the power to waive any of the provisions in regard to the amount of compensation which should be paid by the employer to such employe.

It will be observed from an examination of these statutory provisions that in essence they are guards against contracts to reduce liability for negligence, and so far from being an invasion of the right to contract are precautions against allowing the employer to first accept the act and then avoid its pro-

visions by subterfuge. It is no interference with the right to make agreement that the legislature enacts what it thinks will prevent a breach of an agreement entered into. What is taken away is not the right to bargain but the right, by deviousness, to break the bargain made. The right to make contract is not infringed by statutes aimed to insure compliance with contracts entered into. Neither should it be claimed at this late date that the legislature has no power to prevent contracts between master and servant which fix a low price for and so stimulate the killing and maiming of men—contracts which the employe may feel compelled to make to obtain or retain employment.

In the *McGuire* case, which was sustained by the Supreme Court of the United States, (219 U. S. 549) it was held not to be an inhibited impairment of contract or infringement of the right to enact that the acceptance of the benefits in a relief department shall not operate as a release and satisfaction of all claims against the employing railroad company.

In the *Opinion of the Justices* (Mass.) 96 N. E., 308, it was ruled that the legislature can say no agreement by an employe to waive his rights to compensation under the workmen's compensation bill shall be valid.

The Supreme Court of the United States in the case of *Mondou v. N. Y.*, 223 U. S., 1, has held that Congress may, with reference to the employers' liability act of April 22, 1908, declare, validly, that any contract, rule, regulation or device, the purpose or intent of which is to enable the carrier to exempt itself from the liability therein created, shall be void. This position finds support in the following cases:

Hunter v. C. C. C. Co., 154 N. W. (Ia.), 1037;

State v. Clausen, 117 Pac. (Wash.), 1102;

Railway v. Schubert, 32 Sup. Ct. Rep., at 589;

Cunningham v. N. W. Improvement Co., 44 Mont., 180;

Borgnis v. Falk Co., 147 Wis., 327;

Sexton v. Newark Telephone Co., 86 Atl. (N. J.), 451;

Mondou v. N. Y., N. H. & H. R. Co., 223 U. S. 1.

Workmen's compensation acts, and the like, may validly interfere with existing contracts, if it be done with proper exercise of the police power.

McGuire Case, 219 U. S., 549;

Railway v. Schubert, 32 Sup Ct. Rep., 589;

Hunter v. C. C. C. Co., 154 N. W. (Iowa), 1037;

Sexton's Case, 86 Atl., 451;

State v. Seattle, 132 Pac. (Wash.), 46;

State v. Creamer, 96 N. E., 603.

If there is any sphere within which a statute may validly operate, it ought within that sphere be made effective by appropriate provisions made for that purpose.

Attention should again be called to the fact that the act is elective and, therefore, the statute cannot work an impairment. Whenever liberty is left to the parties as to whether or not to contract at all, then a new contract, or a change in the contract, made by contract, cannot be objected to as an in-

valid impairment. Of course, parties *sui juris* and at liberty, can make new contracts that modify or obviate existing ones without running counter to any constitutional inhibition.

Appellant may also have in mind the provisions found in sections 2477-m2 (b) and 2477-m18, supplement to the code, 1913. The first of these provisions provides that if by or on behalf of the employer any request, suggestion or demand be made that an employe, or one seeking employment, shall exercise his right to reject the act, there shall arise a conclusive presumption that the employe was unduly influenced to exercise this right; that the rejection made under such circumstances shall be conclusively presumed to have been procured through fraud and be null and void. The second provision provides that any contract or agreement made by any employer with any employe as to any claims under the provisions of the act within twelve days after the injury shall be presumed to be fraudulent. The first, which makes fraudulent rejection by the servant, if influence has been brought to bear by the employer, is nothing more or less than an exercise of the right of public self-defense. Assuming there can be a valid compensation act, certainly the legislature may make provision against having the legislative intent as to such act thwarted. To put the ban upon such influences interferes with no right of contract but simply heads off one method of evading and crippling the act. The second provision is also an exercise of proper legislative policy to guard against the chance of obtaining contracts unfair to the employe at a time when the legislature may well assume his physical distress and when his possible financial condition may make him unusually amenable to pressure directed to a waiver of his just

rights. It is merely an attempt to prevent fraud in dealing with the servant at a time when in all probability he is still undergoing so much suffering as that he may readily be taken advantage of. All these provisions are nothing more than proper devices against interference with the policy.

Thus far, we have dealt with the question now in review as though there were no power in the legislative branch to interfere with the making of a contract, unless its making is in some clear sense a defeat of legislative policy, exercised in forbidding just such contract. Whatever of this aspect the discussion has so far shown is due to an assumption for the sake of argument.

There is power in the legislature to abridge the right of contract in the exercise of what may be termed the general power of community self-defense —the police power. See *Camfield v. United States*, 167 U. S., 518; *Noble State Bank v. Haskell*, 219 U. S., 104.

While the right to contract is a property right, like all other property rights it is "subservient to the public welfare," and may be taken by the state in a well directed effort to promote the public welfare by the exercise of the police power. *Borgnis v. Falk*, 133 N. W. (Wis.), 210. It all shows from the old announcement made by Blackstone that when men enter into society, as a compensation for the protection which society gives them, they must yield up some of their natural rights. "The Fourteenth Amendment, however, does not guarantee the citizen the right to make within his state, either directly or indirectly, a contract, the making whereof is constitutionality forbidden by the state." *Hooper v. People*, 155 U. S., 648. The right is "subject to the restraints demanded by the safety and welfare of

the state." *Railway v. Paul*, 173 U. S., 404. To like effect is *State v. Buchanan*, 29 Wash., 602. "It is within the undoubted power of government to restrain some individuals from all contracts as well as all individuals from some contracts." *Frisbie v. United States*, 157 U. S., 160. No contract may limit the exercise of the police power to the prejudice of the general welfare. *Butcher's Union Case*, 4 Sup. Ct. Rep., 652.

The following acts have been sustained against objection that they infringe upon the protection of contracts and of the right to contract afforded by the constitution of the United States: A statute fixing minimum charges for the storage of grain and prohibiting contracts for larger ones. *Munn v. Illinois*, 94 U. S., 113. Prohibiting attorneys from contracting for a larger fee than $10 for prosecuting pension claims has been held to be a valid exercise of the police power. *Frisbie v. United States*, 157 U. S., 160. So of a statute making it unlawful for employes to work in laundries between the hours of 10 P. M. and 6 A. M. *Soon Hing's Case*, 113 U. S., 703. An act making it unlawful for any contractor engaged upon a work of public improvement to require or permit any employe to work more than eight hours per day. *Atkin's Case*, 101 U. S., 207. A statute which forbids a railway employe to contract to assume the risk of hazardous employment or unsafe place to work. *Kilpatrick v. Railway*, 74 Vt., 288. Or contract excluding defense of other assumptions of risk. *Bailey's Case*, 53 Tex. Civ. App. 295; *Alexander's Case* (Tex. Civ. App.) 117 S. W., 927. Preventing miners employed at quantity rates from contracting for wages upon the basis of screened coal, instead of the weight of the coal as

originally produced in the mine. *McLean v. Ark.*, 211 U. S., 539. An act of Congress making it a misdemeanor for a shipmaster to pay any part of wages in advance. *Patterson's Case,* 190 U. S., 169. And an act requiring the redemption in cash of store orders or other evidence of indebtedness issued by employers in payment of wages to employes. *Knoxville v. Harbison,* 183 U. S., 13. In *McGuire v. Railway,* 131 Iowa, 340, the police power sustained a prohibition against reducing liability by means of contractual contribution by the employe to a mutual relief association. Statutes regulating common carriers, pawnbrokers, auctioneers, the inspection and sale of food, providing for mechanics' liens, fixing the age at which persons shall be deemed competent to contract, prescribing the form of promissory notes for a patent right, and the like, limit the natural liberty of contract, but are universally recognized to be safely within the police power.

Bearing upon this subject see also the following cases:

In *Booth v. Illinois,* 184 U. S., 425, at 428, it was said that, "When it is said that the liberty of the citizen includes freedom to use his faculties 'in all lawful ways,' and to earn his living by any 'lawful calling,' the inquiry remains whether the particular calling or the particular way brought in question in a given case is lawful; that is, consistent with such rules of action as have been rightfully prescribed by the state."

In the case of *Barbier v. Connolly,* 113 U. S., 27, at 31, it was said: "But neither the amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the power of the state, sometimes termed its police power, to

prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity."

In the case of *Holden v. Hardy,* 169 U. S., 366, at 391, it was said: "The right of contract, however, is subject to certain limitations which the state may lawfully impose in the exercise of its police power."

In the case of *Erie R. Co. v. Williams,* 34 Sup. Ct. Rep., 761, it was said: "But liberty of making contracts is subject to conditions in the interest of the public welfare, and which shall prevail—principle or condition—cannot be defined by any precise and universal formula. Each instance of asserted conflict must be determined by itself, and it has been said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of the public. The burden is on him who attacks the legislation, and it is not sustained by demonstrating that it conflicts with some constitutional restraint, or that the public welfare is not subserved by the legislation. The legislature is, in the first instance, the judge of what is necessary for the public welfare, and a judicial review of the judgment is limited. The earnest conflict of serious opinion does not suffice to bring it within the range of judicial cognizance."

See also:

Knoxville Iron Co. v. Harbison, 183 U. S., 13;

Muller v. Oregon, 208 U. S., 412;

McLean v. Arkansas, 211 U. S., 539;

Gundling v. Chicago, 177 U. S., 183;

Central Lumber Co. v. Dakota, 226 U. S., 157;

German Alliance Ins. Co. v. Lewis, 233 U. S., 389.

Appellees respectfully submit that there is nothing in the statute now under consideration which violates the Fourteenth Amendment as interfering with appellant's liberty of contract.

III.

THE IOWA STATUTE DOES NOT VIOLATE THE FOURTEENTH AMENDMENT IN ANY OTHER WAY OR FOR ANY OTHER REASON.

Due Process of Law, Priviliges And Immunities, And Equal Protection of the Law.

There is little more to be said upon the general insistence that the statute violates the guaranties of due process of law and of equal protection of the law, and that it effects a wrongful abridgement of the privileges and immunities of citizenship.

In *Bank v. Pennsylvania,* 167 U. S., 461, 17 Sup. Ct. 829, L. Ed., 237, it is said that, as the statute fixes the time when the bank shall make its report to the Auditor General of the value of its shares, and directs him to hear the stockholders, it satisfies the requirement as to "due process of law" in tax proceedings, which is that the law shall fix the time and place at which the assessment is to be made; the rule being that official proceedings are always, in the absence of express provision to the contrary, to be had at the office of the officer charged with the duties.

Buttfield's Case, 182 U. S., 470, 24 Sup. Ct. 350, 48 L. Ed. 525, holds that assuming no opportunity was afforded by the Tea Inspection Act, March 2, 1897, c. 358, 29 Stat. 604 (U. S. Comp. St. 1913, sections 8786-8796), to an importer of teas for a hearing with reference to the establishing of government standards of purity, quality, and fitness for consumption, and the question as to whether his tea should be rejected as not entitled to admission because inferior to governmeent standards, yet the statute is not thereby rendered objectionable as a denial of due process of law.

In *Cunningham's Case,* 44 Mont. 180, 119 Pac., 555, it is held that the phrase, "due process of law," does not necessarily mean trial or hearing by judicial proceeding, and in *Bank v. Anderson,* 165 Cal., 437, 132 Pac., 755, that due process of law does not necessarily imply a regular proceeding in a court of justice. In principle, the decision in Cunningham's Case, supra, is that the power to enact a compulsory law exists, and that such enactment is not in violation of the due process clause of the Federal Constitution. And that is the holding of *In re Opinion of Justices,* 209 Mass., 607, 96 N. E., 308, and of *Borgnis' Case,* 147 Wis., 327, 133 N. W., 210, 37 L. R. A. (N. S.), 489, wherein it is held that since the commission administering the workmen's compensation law is a mere administrative board, it had power to investigate or determine facts without notice to the parties of each successive step in the proceedings, without thereby working a denial of "due process of law."

The Washington Compensation Act is sustained against objection that it unduly abridges the privileges and immunities of the citizen, and that it denies

the equal protection of the laws. *Clausen's Case,* 65 Wash., 156, 117 Pac., 1102. So is the industrial insurance law of that state. *State v. Timber Co.,* 75 Wash., 581, 135 Pac., 645. The Ohio Employers' Liability Insurance Act is declared to be a valid exercise of legislative power, not repugnant to the federal or state Constitution, or to any limitation contained in either. *State v. Creamer,* 85 Ohio St., 97 N. E., 602, 39 L. R. A. (N. S.), 427.

It would seem that the authorities already cited in the earlier part of this argument would prove a sufficient answer to the contention of appellant that the statute under consideration violates the Fourteenth Amendment and so this division of the argument will be confined to references to a few authorities from this court.

The phrase "due process of law" has been declared by this court to be equivalent to the phrase "law of the land." As was said by Mr. Justice Field in the case of *Missouri Pacific Railway Co. v. Humes,* 115 U. S., 519:

> "The words 'due process of law' were held to be the equivalent of 'law of the land.' And a similar purpose must be ascribed to them when applied to a legislative body in this country; that is, that they are intended, in addition to other guaranties of private rights, to give increased security against the arbitrary deprivation of life or liberty, and the arbitrary spoliation of property. But, from the number of instances in which these words are invoked to set aside the legislation of the States, there is abundant evidence, as observed by Mr. Justice Miller in the case referred to, 'that there exists some strange misconception of the scope of this provision, as found in the Fourteenth Amendment.' * * * *

> "If the laws enacted by a State be within the legitimate sphere of legislative power, and their enforcement be attended with the observance of those general rules which our system of jurisprudence prescribes for the security of private rights, the harshness, injustice, and oppressive character of such laws will not invalidate them as affecting life, liberty or property without due process of law."

The Fourteenth Amendment was one of three adopted after the Civil War but they were not intended to interfere with necessary state legislation. As was said by Mr. Justice Miller in the *Slaughter-House Cases,* 16 Wallace, 82:

> "Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the States with powers for domestic and local government, including the regulation of civil rights—the rights of person and of property—was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the Nation."

The legislation under consideration was enacted as a regulation of the rights between master and servant. It takes into account the new conditions which have arisen in our industrial activities which make the old law of negligence inapplicable. It has been repeatedly held in the state courts passing upon legislation of this character that the state has authority to change the law regulating the rights of employer and employe to fit modern conditions.

Unless the law of master and servant can be changed from time to time, as public sentiment de-

mands, then "the procedure of the first half of the seventeenth century would be fastened upon the American jurisprudence like a straight-jacket, only to be unloosed by constitutional amendment," as was said by Mr. Justice Moody in the case of *Twining v. New Jersey*, 211 U. S., 101.

The court said in the case of *Hurtado v. California*, 110 U. S., 529, that to do so would be "to deny every quality of the law but its age, and to render it incapable of progress or improvement. It would be to stamp upon our jurisprudence the unchangeableness attributed to the laws of the Medes and Persians."

Chief Justice Waite, speaking for the court, in the case of *Munn v. Illinois*, 94 U. S., 134, said:

> "A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances."

Chief Justice Fuller in the case of *In re Kemmler*, 136 U. S., 448 said:

> "But it (the Fourteenth Amendment) was not designed to interefere with the power of the State to protect the lives, liberties and property of its citizens, and to promote their health, peace, morals, education and good order."

See also:

Gundling v. Chicago, 177 U. S., 183;

McLean v. Arkansas, 211 U. S., 547;

Hurtado v. California, 110 U. S., 516;

Twining v. New Jersey, 211 U. S., 77, 98.

Attempts have been repeatedly made by litigants to extend the guaranties given by the Fourteenth Amendment into a much broader field than that contemplated by its framers, but this court has so frequently limited its provisions to its proper scope that we deem it unnecessary to cite additional authorities.

It is the contention of appellee that there is no provision in the Iowa statute now under consideration which offends against the Fourteenth Amendment or denies to appellant any of the rights guaranteed to him by such constitutional provision.

Every Presumption Indulged in Favor of Constitutionality of the Statute

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It is an elementary principle in determining the constitutionality of a statute that any reasonable doubt must be resolved in favor of the legislative action.

In the case of *Hylton v. United States,* 3 Dall., 171, Mr. Justice Chase, speaking for the court raised the question as to whether the court had the power to declare an act of Congress void, and stated: "But if the court have such power I am free to declare that I will never exercise it but in a very clear case.

Chief Justice Waite in the *Sinking Fund Cases*, 99 U. S., 717, said: "Every possible presumption is in favor of the validity of a statute and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of the salutary rule."

The language of the court in the case of *Holden v. Hardy*, 169 U. S., 366, is especially apposite in this case. The court, after reviewing with great length and learning the various changes which had taken place in our fundamental law in order to meet changed conditions, said:

> "This case does not call for an expression of opinion as to the wisdom of these changes. * * * They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the states of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land."

It was said in the case of *Atkins v. Kansas*, 191 U. S., 223:

> "So, also, if it be said that a statute like the one before us is mischievous in its tendencies,

> the answer is that the responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives."

In the case of *McLean v. Arkansas,* 211 U. S., 539, 29 Sup. Ct., 206, 53 L. Ed., 315, it is held a statute should not be set aside by the judiciary unless it "is unmistakably and palpably in excess of legislative power." It is said:

> "The mere fact that a court may differ with the Legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference. * * * It is not to be set aside because the judiciary may be of opinion that the act will fail of its purpose, or because it is thought to be an unwise exertion of the authority vested in the legislative branch of the government."

CONCLUSION

Appellee, by way of summary, states that the appellant cannot urge before this court the objections set forth in his brief and argument for the reason that he cannot complain of another's grievance. That is, being an employer, he cannot complain in the interest of the employe or, having rejected the act, he cannot complain on behalf of those who have

not rejected the act and who have availed themselves of its privileges.

Appellee also contends that, since the appellant has rejected the compensation features, he is by express provision of the statute in exactly the same position as though such legislation had never been enacted except that he is denied what are generally known as the common law defenses. To state it differently: Appellant has the absolute right to contract with his employes as he sees fit, to try all matters of difference between himself and his employes before a regularly constituted jury. In fact, he has all of the rights and privileges guaranteed to him under the Fourteenth Amendment.

Appellee further contends that under the authorities of this court the Iowa workmen's compensation act is constitutional in each and all of its parts and that for this reason, if for no other, the demurrer to the bill of complaint should be sustained.

The decision of the United States District Court should be affirmed.

Respectfully submitted,

GEORGE COSSON, *Att'y Gen'l.,*
For Appellee.

HENRY E. SAMPSON, *Ass't Att'y General of Counsel.*

APPENDIX

HAWKINS v. BLEAKLY, State Auditor.

HON. SMITH MCPHERSON, *District Judge.*

This is an action by a bill in equity exhibited by complainant against State Auditor Bleakly and State Industrial Commissioner Garst seeking to enjoin the enforcement of chapter 147 of the Laws of the Thirty-Fifth General Assembly of Iowa (1913) known as the Employer's Liability or Workmen's Compensation Law. The complainant, being an employer of labor and within the terms of the statute, contends that the statute is unconstitutional and void. The defendant moves to dismiss the case, equivalent to a demurrer, on the ground that the bill is without equity and that the statute is valid. I do not care to prepare a formal opinion, and I make known my views as if orally stated.

All thoughtful persons agree that present conditions call for legislative, judicial, or economical relief, one or all. Enterprises such as railroads, street car lines, interurban lines, manufacturing plants of all kinds, with rapidly moving machinery, usually hazardous, with the dangerous invisible electric current of high voltage, the agency of steam, geared with cogwheels, belts, pulleys, and other appliances, are killing and crippling thousands and thousands of persons every year. This is so even when the employes are sober, attentive, and watchful, and is materially increased when such persons, or some of

them, are negligent. This means poverty and distress, and is followed by charities, and too often filling the poorhouses and sanitariums. The man with an eye gone, a leg or arm off, or otherwise physically or mentally impaired, has but a limited or no chance in life. This burden sometimes falls upon the injured person alone, sometimes on the wife, children or parents, and often on the general public by increased taxation. Presidents, Congressmen, legislators, and men of eminence for years have been urging actual reforms in these matters, and the employes have been insisting upon relief. All persons know these things to be so, and the literature and debates for years have been devoted to the query as to the solution and remedy. The courts have not been lagging so much as retrograding in dealing with the subject. The time of the courts is consumed in listening to the harrowing stories, sometimes of truth and sometimes of perjury. Claim agents are busy from the hours of death or injury in locating and preserving the testimony that the corporation may be protected. The friends and lawyers and agents of the dead and injured are equally industrious. We often see advertisements in the press of "witnesses wanted to the occurrence." We have new words in the dictionary, but the new words "snitches" and "ambulance chasers" are of the simple and well-known language. Verdicts must be for twice the fair amount to be awarded as damages, so as to allow the "contingent fee" or the injured man, his widow, or children, must accept half the sum justly due.

And these results are only obtained after years of litigation. Sickness, unavoidably out of town, urgent business in other courts, prolong the litigation. When judgment is at last obtained in favor of the

one side or the other, appeals, certiorari, mandamus, and writs of error, one or all, are sought, and then other delays. Sometimes verdict are returned, and later on it is ascertained that the testimony was to meet the law of the case. Sometimes the verdicts are returned for only part of the sum that should have been awarded, and sometimes the verdict is followed by getting well so speedily as to be termed almost miraculous. So that, regardless upon which side the greater wrongs occur, a question no one can decide, all ought to concede that which is the truth, that the best the courts can do in many cases is frailtyitself. Something like 30 per cent of the time of the courts is taken with these cases, adding enormously to the expense of the taxpayers. So that if there is to be a remedy for these evils, and that remedy is limited to the courts, reforms more than paper reforms must be brought about. And such real reforms are well-nigh hopeless if the past 30 years of judicial history is to be a criterion.

To meet the burdens created by death and injury thus brought about, by public taxation, is to argue the question by idle talk. The people are now groaning under taxation.

Damages not easily avoided must go into the cost of production and be borne by the consumers, and those readily avoided in some instances at least should be borne by him or it responsible therefor. But that aids but little because the question as to who is responsible is often a complicated and difficult question and one not easily solved, and often solved by well-nigh a guess.

Nearly every foreign country has attempted to solve it by legislation, and 20 or more of the United States within a few years have enacted statutes for the purpose of affording a remedy. Some of these

statutes have been overthrown by the courts, and some have been sustained as valid legislation. The objections usually urged are those against impinging upon the liberty of contract, denying due process of law, and denying the right of trial by jury. The clause in our state Constitution providing that the right of trial by jury shall remain inviolate presents a serious and important question. It is likewise an humorous objection, because a trial by jury is seldom asked or desired by the employer of labor. But waiving the humorous phases, it is both important and necessary to at least briefly consider the constitutional objections. But in doing this I shall not review the great decisions on constitutional law, but will be content by analyzing this statute. This is sufficient because all agree that the constitutional provisions can be waived. They are forced on no one, if both agree to waive them. And this waiver can be writing, or verbally done, or done by common consent of acquiescence.

The statute is one of much verbiage and prolixity of 51 lengthy sections. But once and for all it can be stated, and correctly stated, that under this statute every employer and every employe can have his day in court, and can have due process of law, and can have a jury trial if one or all are desired. No one of these constitutional rights is denied. It is true that such can be had with some limitation on what has heretofore existed, which limitations will presently be noted. Whether the parties are denied the fullest scope of the so-called liberty of contract is not longer argued with much seriousness by reason of the decision by the Supreme Court of the United States in the case from this state of *Chicago, Burlington & Quincy Railroad v. McGuire,* 219 U. S., 549, 31 Sup. Ct., 55 L. Ed., 328.

The first 22 sections of this lengthy statute fix the liability of the employer and the rights of the employe. A scale of compensation is fixed and made certain. Each party can come within the statute or remain outside of the statute. Each party has his election. Many of the states for many years have had statutes fixing the liability with precision in cases of death, and in no instance has any court held such statute invalid. And why a statute cannot fix with certainty the damages to be allowed in case of the loss of an arm, leg, eye, or other injury, is not perceived, and counsel fail to state any legal or constitutional objection thereto.

But it is argued that, if the employer fails to elect to come within the statute and have the case tried and determined as heretofore, the employer cannot urge the defense of assumption of risks by the employe or contributory negligence. And yet each of these defenses first crept into the law by slight recognition and then grew and developed by judicial decisions without the aid of legislation. And it cannot be so that, simply because such became recognized as the law by judicial decisions, they cannot be abridged or denied by legislation. The same is true of the doctrine of fellow servants. That doctrine never was affirmed by legislation except impliedly, and impliedly only because of legislative action denying such as defense as to railroads and some other hazardous employments. All lawyers know that the court-made rule in Iowa, for a long time maintained but against the decided weight of authority, is that the plaintiff must both plead and prove that the injured person must show that he was without fault or negligence. Most of the appellate courts hold otherwise, holding that it is a defense only. United States courts sitting in Iowa, as

well as in all the other states, hold that it is defensive only and requires the defendant to show by a preponderance of testimony that the injured man or deceased contributed to the injury. For a long time many of the states had the rule of comparative negligence, and now in some instances Iowa has such a rule. But in none of these matters is there any vested right for or against any of these defenses or burdens placed upon the plaintiff. They closely belong to or inhere in police regulations for the preservation of life and limb and are within the legislative powers of the statee, and in interstate commerce matters within the powers of Congress. The decision of appellate courts, the Supreme Court of the United States included, are recent and well known by the profession. It is true that, if the parties eleect to come within the statute, they must do so by notice or by acquiescence. This is attended with some formalities, but that is a question of detail and policy alone belonging to the Legislature and outside the province of the courts to either regulate or condemn.

The next 18 sections of the statute relate to the appointment of a commissioner, an office now held by the defendant Garst. Under his direction arbitrations are brought about. Arbitrations existed at common law, and they are allowable under the Iowa statute. The conclusion and award of an arbitrator can be enforced by judicial proceedings. There is nothing new about all this. All these arbitrations are agreed to under this statute either by specific agreement or by acquiescence.

The remaining nine sections of the statute relate to insurance to cover liabilities for damages. The Chicago, Burlington & Quincy Railroad Company for years had a scheme of insurance which, if

resorted to by the injured employe, was a bar to a recovery by an action in court. Finally that scheme was condemned by Iowa legislation, and the statute prohibiting it was sustained by the United States Supreme Court, affirming the Iowa Supreme Court in the McGuire Case, hereinbefore referred to. The insurance scheme was held lawful by the Iowa Supreme Court in a number of cases prior to the adoption of the legislation referred to. And now we have additional legislation allowing the very thing condemned by the prior legislation. And so it is that no constitutional objection can be made to the latest legislation.

Nearly all of the objections to this statute are argued from the standpoint of morals and propriety and policy. As of course those were questions for the Legislature. This statute may have, and no doubt does have, many objectionable features; but that it is a statute with right tendencies I have no doubt. And all such legislation is a matter of growth and development, and in the end when mature, as it ought to be and quite likely will be, beneficial results will be obtained. At all events, this legislation cannot bring forth worse results than we now have as to these matters by court procedure. And still further, and in no event, can courts condemn the mere policy or proprieties of the law. I find no constitutional objections to this measure.

Defendant's motion will be sustained, and the case dismissed, with prejudice.

I.

STATEMENT.

J. C. Hawkins, an employer and appellant herein, brought this action against John L. Bleakly, then auditor of state, and Warren Garst, then the industrial commissioner of Iowa, to restrain the enforcement of an Iowa statute providing for workmen's compensation (sections 2477-m to 2477-m50, inclusive, supplement to the code, 1913), upon the ground that it was repugnant to the provisions of the 14th Amendment to the Constitution of the United States. The motion to dismiss, filed by the appellees (For copy see Transcript of Record, p. 25), was based upon five grounds, and was sustained by the United States District Court, whereupon this appeal was perfected. A carefully considered opinion was prepared by the Trial Court, and is set out in full at page 27 of Transcript of Record.

The Iowa statute is elective or optional in its character, and it has been so held by the supreme court of Iowa.* The appellant has exercised his right to reject the compensation features of the act and, therefore, under the express provisions of the statute, appellant is in identically the same situation as though the Iowa workmen's compensation act had not been passed, with the exception that, having voluntarily rejected the compensation features of the act, he cannot now rely upon what is generally known as the three common law defenses, and he now has the burden of proving non-negligence.

The appellant makes a general attack upon the Iowa statute, criticising its form and general purpose, but the only constitutional objections requiring consideration can best be discussed under two heads as follows:

I. INTERFERENCE WITH THE FREEDOM OF CONTRACT.

II. VIOLATION OF THE FOURTEENTH AMENDMENT.

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*_Hunter vs. Colfax Consolidated Coal Co._, 154 N. W. (Ia.), 1037.

II.

LEGAL PROPOSITIONS AND BRIEF.

1.

Statute Optional.

The Iowa statute is elective and becomes effective only upon consent of both parties to the employment contract.

Hunter vs. Colfax Consolidated Coal Co., 154 N. W. (Ia.), 1037;

Opinions of Justices, 209 Mass., 607;
Borgnis vs. Falk Co., 147 Wis., 337;
Sexton vs. Newark Telephone Co., 86 Atl. (N. J.), 451.

2.

Appellant has Rejected the Act.

Appellant stated in his bill of complaint that "Your orator further says your orator has never consented to become subject as an employer to any of the provisions of said act, but that he has at all times, and now continues, as he will in the future, to reject unconditionally and absolutely the obligations and provisions of said act." (See Transcript of Record, p. 3.)

By this voluntary action of the appellant, he is, by express provision of the statute, unaffected by the provisions of the Iowa workmen's compensation act, except that he has been deprived of the three common law defenses. These defenses are not constitutional rights but have been created from time to time by statutes or by judicial decisions, and the courts have repeatedly held that they can be lawfully taken away by the legislature at any time.

That no one has a vested right in the rules of the common law has been established beyond controversy.

Munn vs. Ill., 104 U. S., 113;
City of Chicago vs. Sturges, 222 U. S., 213;
Mondou vs. N. Y., N. H. & H. R. Co., 223 U. S., 1;
Sharp vs. Sharp, 221 Ill., 236;
Bennett vs. Hargis, 1 Nebr., 419.

Appellant still has his right to make contracts of employment, to refuse to carry indemnity insurance, to have differ-

ences with his employees settled in regularly organized courts, to have all questions of fact submitted to a jury, and has no ground to contend that his property is being taken without due process of law.

There is nothing in the Iowa statute which compels appellant to become subject to its compensation features or which compels an employee to waive his right of action at common law. Appellant complains of certain inconveniences to the employee when the act is rejected but these conditions do not constitute legal compulsion or a deprivation of fundamental rights.

Opinions of Justices, 209 Mass., 607.

3.

Appellant Cannot Raise Objections.

Appellant, even though the Iowa statute might violate certain constitutional rights of one who elects to operate under its provisions, is in no position to raise these objections to the statute for the reason that he has exercised his right under the statute to refuse to be governed by its provisions and is not now governed by its provisions. The statute, therefore, takes away none of appellant's constitutional rights and he is in no position at this time to complain for and on behalf of others who may elect to be governed by its provisions.

Turpin vs. Lemmon, 187 U. S., 51 at 61;
Hooker vs. Burr, 194 U. S., 415 at 419;
Southern Ry. Co. vs. King, 217 U. S., 524 at 534;
Collins vs. Texas, 223 U. S., 288 at 295;
Quong Wing vs. Kirkendall, 223 U. S., 59;
Standard Stock Food Co. vs. Wright, 225 U. S., 540 at 552.

The employer who has rejected the act cannot be heard to urge a grievance of employees who have availed themselves of the workmen's compensation features of the act. *Jeffrey vs. Blagg*, 35 Sup. Ct. Rep., 167; *Jensen vs. Railway*, 109 N. E. (N. Y.), 600.

4.

Iowa Statute Held Constitutional.

The Iowa statute now being attacked in this court has been passed upon by the supreme court of Iowa, in the case of

Hunter vs. Colfax Consolidated Coal Co., 154 N. W. (Ia.), 1037. All of the objections here being made to the Iowa statute in this court were presented in the case of *Hunter vs. Colfax Consolidated Coal Co., supra*, and the supreme court of Iowa, in a carefully considered opinion, held that the statute was clearly within the police power of the state, that the form of the statute was elective, that it did not unlawfully interfere with liberty of contract, that it did not deprive parties affected thereby of their property without due process of law and that said Iowa workmen's compensation act was constitutional and valid in all its parts. Similar statutes have been upheld in other jurisdictions, and no where has an elective statute been declared unconstitutional.*

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*For convenience a list of the cases in which workmens' compensation laws have been upheld against attacks of the same nature as those made in the case at bar:

ILLINOIS:

Deibelkis vs. Link Belt Co., 261 Ill., 454; 104 N. E., 211;
Crooks vs. Taaze Coal Co., 263 Ill., 343; 105 N. E., 132;
Dietz vs. Big Muddy Coal & Iron Co., 263 Ill., 480; 105 N. E., 289.

IOWA:

Hunter vs. Colfax Consolidated Coal Co., 154 N. W. (Ia.) 1037.

MASSACHUSETTS:

Opinion of Justices, 209 Mass., 607; 96 N. E., 308.

MINNESOTA:

Matheson vs. Minneapolis Street Ry. Co., 148 N. W. (Minn.), 71.

MONTANA:

Cunningham vs. N. W. Improvement Co., 44 Mont., 189; 119 Pac., 554.

NEW JERSEY:

Sexton vs. Newark Telephone Co., 86 Atl. (N. J.), 451;
O'Donnell vs. Simms Magneto Co., 85 N. J. L., 64; 89 Atl., 922.

NEW YORK:

Jensen vs. So. Pac. Co., 109 N. E., 600;
Spratt vs. Sweeney & Gray Co., 153 N. Y. Sup., 505.

OHIO:

State vs. Creamer, 95 Ohio St., 39; 39 L. R. A. (N. S.) 694;
Porter vs. Hopkins, 109 N. E. (Ohio), 629;
Zumkehr vs. Portland Cement Co., 23 Ohio Dec., 224;
Jeffery Mfg. Co. vs. Blagg, 235 U. S., 571; 35 Sup. Ct. Rep., 167.

TEXAS:

Memphis Cotton Oil Co. vs. Tolbert, 171 S. W. (Texas), 309.

WASHINGTON:

State vs. Clausen, 65 Wash., 156; 37 L. R. A. (N. S.), 466;
State vs. Mountain Timer Co., 75 Wash., 581;
Stoll vs. Pac. Steamship Co., 205 Fed., 169.

WISCONSIN:

Borgnis vs. Falk Co., 147 Wis., 327 37 L. R. A. (N. S.), 489.

UNITED STATES:

Mondou vs. N. Y. & N. H. & H. R. Co., 223 U. S., 1.

III.

INTERFERENCE WITH LIBERTY OF CONTRACT.

The Iowa statute under consideration expressly provides that existing contracts are not to be affected. See section 2477-m50, supplement to the code, 1913; also section 2477-m51, supplement to the code, 1913, which expressly provides that the Iowa statute now under consideration shall not apply to an injury sustained by such employee of such employer which occurs prior to the time when such act takes effect in all its parts, and that the law in force at the time such injury occurs, if before such act takes effect in all its parts, shall be as though said act had not been enacted, whether the action is enacted after or before the act takes effect in all its parts.

Appellant objects to the provisions found in sections 8, 18 and 19 of the act, which are merely provisions to prohibit the employer from paying less than the statutory compensation. In essence the statutory provisions complained of by appellant are grounds against contracts to refuse liability for negligence, and instead of being an invasion of the right to contract are precautions against allowing the employer to first accept the act and then avoid its provisions by subterfuge. It is no interference with the right to make agreements that the legislature enacts what it thinks will prevent the breach of an agreement entered into. What is taken away in these statutory provisions complained of by appellant is not the right to bargain but the right, by deviousness, to break the bargain made.

The right to make contracts is not infringed by statutes aimed to insure compliance with contracts entered into and it should not be claimed at this late date that the legislature has no power to prevent contracts between master and servant which fix a low price for, and so stimulate, the killing and maiming of men—contracts which the employee may feel compelled to make to obtain or retain employment.

In the McGuire case, which was sustained by the supreme court of the United States, 219 U. S., 549, it was held not to

be an inhibited impairment of contract or infringement of the right to contract to enact that the acceptance of the benefits in a relief department shall not operate as a release and satisfaction of all claims against the employing railroad company.

In the Opinion of the Justices (Mass.), 96 N. E. 308, it was ruled that the legislature can say no agreement by an employee to waive his rights to compensation under the workmen's compensation bill shall be valid.

The Supreme Court of the United States has held that Congress may, with reference to the Employers' Liability Act of April 22, 1908, declare, validly, that any contract, rule, regulation or device, the purpose or intent of which is to enable the carrier to exempt itself from the liability therein created, shall be void. This last holding is the position taken in the following cases:

Hunter vs. Colfax Consolidated Coal Co., 154 N. W. (Ia.), 1037;
State vs. Clausen, (Wash.), 117 Pac., 1102;
Railway vs. Schubert, 32 Sup. Ct. Rep., at 589;
Cunningham vs. N. W. Improvement Co., 44 Mont., 180;
Borgnis vs. Falk Co., 147 Wis., 327;
Sexton vs. Newark Telephone Co., 86 Atl. (N. J.), 451;
Mondou vs. N. Y., N. H., & H. R. Co., 223 U. S., 1.

Workmen's compensation acts, and the like, may validly interfere with existing contracts, if it be done with proper exercise of the police power.

McGuire Case, 219 U. S., 549;
Railway vs. Schubert, 32 Sup. Ct. Rep., 589;
Hunter vs. Colfax Consolidated Coal Co., 154 N. W. (Ia.), 1037;
Sexton's Case, 86 Atl., 451;
State vs. Seattle, 132 Pac. (Wash.), 46;
State vs. Creamer, 96 N. E., 603.

If there is any sphere within which a statute may validly operate, it ought within that sphere be made effective by appropriate provisions taken for that purpose.

Attention should again be called to the fact that the act is elective and, therefore, the statute cannot work an impair-

ment. Whenever liberty is left to the parties as to whether or not to contract at all, then a new contract, or a change in the contract, made by contract, cannot be objected to as an invalid impairment. Of course, parties, *sui juris* and at liberty, can make new contracts that modify or obviate existing ones without running counter to any constitutional inhibition.

Appellant, an employer, becomes strangely concerned with the welfare of employees and objects to the provisions of the statute which make it difficult, as he says, for the employee to signify his waiver of the compensation features of the act, and he is referring, no doubt, to the provision found in the latter part of section 2477-m2 which requires the employee to attach affidavit to his notice of rejection and that such affidavit must not be acknowledged before any person interested in the business of the employer and that the Iowa industrial commissioner may return such notice if it does not comply with the requirements of the statute. Appellant also refers to the provisions of section 2477-m18, which provides that any contract or agreement made by any employer as to any claim under the provisions of the act within twelve days after the injury shall be presumed to be fraudulent.

The first provision which makes fraudulent rejection by the servant, if influence has been brought to bear by the employer, is nothing more or less than the exercise of right to public self defense. Assuming that there can be a valid compensation act, certainly the legislature may make provision against having the legislative intent as to such act thwarted; to put a ban upon such influences interferes with no right of contract, but simply heads off one method of evading and crippling the act. One underlying principle of the statute is to promote acceptance by the employee. No valid right is infringed by discouraging the employment of methods that may press the employee to rejection.

As to the other provision referred to, appellees contend that it is an exercise of proper legislative power to guard against the chance of obtaining contracts unfair to the employee at a time when the legislature may well assume that physical distress and possible financial condition makes him unusually

amenable to the pressure directed to a waiver to his just rights. It is merely an attempt to prevent fraud in dealing with the servant at a time when, in all probability, he is probably undergoing so much suffering that he may readily be taken advantage of.

Thus far, we have dealt with the question now in review as though there were no power in the legislative branch to interfere with the making of a contract, unless its making is in some clear sense a defeat of legislative policy, exercised in forbidding just such contract. Whatever of this aspect the discussion has so far shown is due to an assumption for the sake of argument.

There is power in the legislature to abridge the right of contract in the exercise of what may be termed the general power of community self-defense—the police power. See *Camfield vs. United States*, 167 U. S., 518; *Noble State Bank vs. Haskell*, 219 U. S., 104.

While the right to contract is a property right, like all other property rights it is "subservient to the public welfare," and may be taken by the state in a well directed effort to promote the public welfare by the exercise of the police power. *Borgnis vs. Falk*, 133 N. W. (Wis.), 210. It all flows from the old announcement made by Blackstone, that when men enter into society, as a compensation for the protection which society gives to them, they must yield up some of their natural rights. "The 14th Amendment, however, does not guarantee the citizen the right to make within his state, either directly or indirectly, a contract, the making whereof is constitutionally forbidden by the state." *Hooper vs. People*, 155 U. S., 648. The right is "subject to the restraints demanded by the safety and welfare of the state." *Railway vs. Paul*, 173 U. S., 404. To like effect in *State vs. Buchanan*, 29 Wash., 602. "It is within the undoubted power of government to restrain some individuals from all contracts as well as all individuals from some contracts." *Frisbie vs. U. S.*, 157 U. S., 160. No contract may limit the exercise of the police power to the prejudice of the general welfare. *Butcher's Union case*, 4 Sup. Ct. Rep. 652.

IV.

FOURTEENTH AMENDMENT.

Appellant contends that the statute under consideration offends against the 14th amendment of the constitution of the United States in that it deprives him of the right to trial by jury.

Since the Iowa statute is elective and since appellant herein has rejected its compensation features he may under the statutes of Iowa have all differences with his employees settled in regularly organized courts and have all questions of facts submitted to a jury, and he is therefore in no position to contend that his right of trial by a jury is denied or that his property is being taken without due process of law.

But then the right of trial by a jury, as guaranteed by the federal constitution, is not denied by the Iowa statute under consideration since the provisions of the federal constitution do not guarantee a trial by a jury in a civil action in a state court. The 7th amendment to the constitution touching the right of trial by a jury applies only to the federal statutes.

Edwards vs. Elliott, 21 Wallace, 557;
Pierson vs. Yewdall, 95 U. S., 294;
Baron vs. Baltimore, 7 Peters, 247;
Twitchess vs. Com., 7 Wallace, 326;
Livingston vs. Moore, 7 Peters, 551;
State vs. McDowell, 32 L. R. A., N. S. (Wash.), 414.

The courts have repeatedly passed upon this question of the right of trial by jury and have uniformly held adversely to the position taken by appellant.

Hunter vs. Colfax Consolidated Coal Co., 154 N. W. (Ia.), 1037;
State vs. Claussen, 65 Wash., 156;
Stoll vs. Pac. Coast Steamship Co., 205 Fed., 169;
State vs. Mt. Timber Co., 75 Wash., 581;
Cunningham vs. N. W. Improvement Co., 44 Mont., 189;
State vs. Creamer, 85 Ohio St., 349;
Sexton vs. Newark Tel. Co., 86 Atl., (N. J.), 451;
Mondou vs. N. Y., N. H. & H. R. Co., 223 U. S., 1;
Martin vs. Pittsburgh & Lake Erie R. R., 203 U. S., 284;
Young vs. Duncan, 106 N. E. (Mass.), 1.

There must be an action at law as contra distinguished from a special proceeding and a showing of fact joined therein upon the pleadings before a jury trial can be claimed as a constitutional right.

Koppicus vs. Capitol Com'rs, 16 Calif., 284;
People vs. Hill, 163 Ill., 186.

The legislature has the constitutional right to provide for the execution and administration of the law without resort to the courts.

Davison vs. Walla Walla, 21 L. R. A., N. S. (Wash.), 454, and cases cited.

The statute under consideration does not by its terms violate any right of trial by jury but simply furnishes a means whereby an injured workman and his employer may dispense with intervention of a jury to ascertain the compensation which the workman ought to have and the means thus afforded by the statute may be properly and voluntarily chosen by both parties.

The statutory provisions for settling all differences between employer and employee under the Iowa workmen's compensation act may be briefly summarized as follows:

If the employer and employee reach an agreement in regard to the compensation under the act a memoranda thereof is filed with the commissioner and unless he, within twenty days, disapproves of same, said agreement stands approved and is enforcible for all purposes under the provisions of the act. (Section 2477-m25). If the parties in interest fail to reach an agreement in regard to compensation, either party may notify the commissioner, who thereupon forms a committee of arbitration of three, of which the commissioner is one—the other two are named by the two parties respectively. (Section 2477-m26.) The arbitration committee convenes at the place where the injury was sustained and makes inquiries and investigations and hears evidence. The decision of the committee, together with a statement of evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions coming before it are filed with the commissioner. Unless a claim for a review is filed by either

party within five days, the decision becomes enforcible under the provisions of the act. (Section 2477-m29.) The committee of arbitration has power to subpoena witnesses, administer oaths, examine records bearing upon questions in dispute. (Section 2477-m24.) If a claim for review is filed, the commissioner shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or refer the matter back to the committee for further findings of fact, and he shall file his decision with a record of the proceedings and notify the parties. (Section 2477-m32.)

The party in interest may present certified copy of the order of the commissioner or decision of the committee from which no claim for review is made within the time allowed for such presentation, or present a memoranda of agreement approved by the commissioner, and all papers in connection with same to the district court, whereupon said court shall render decree in accordance therewith and notify the parties. Such decree shall have the same effect in all proceedings in relation thereto and shall thereafter be the same as though rendered in a suit duly heard and determined by said court. (Section 2477-m33.) Process and procedure under the act shall be as summary as reasonably may be. (Section 2477-m24.) See recent case of *In Re Employers' Liability Insurance Corporation*, 102 N. E. (Mass.), 677 at 699.

The Iowa Act provides for due process:

Gundling vs. Chicago, 177 U. S., 183;
McLean vs. Arkansas, 211 U. S., 547;
Hurtado vs. California, 110 U. S., 516;
Twining vs. New Jersey, 211 U. S., 77, 98.
Also cases in note at foot of p. —

This court is not clothed with authority and jurisdiction to declare unconstitutional an act of the state legislature because it is not couched in stereotyped language or because the court might consider it was illogical in its arrangement.

5 Elliott's Debates, 428;
Hilton vs. U. S., 3 Del., 171;
Sinking Fund Cases, 99 U. S., 717;
Holden vs. Hardy, 69 U. S., 366.

If there is any doubt as to the constitutionality of the act that doubt should be resolved in the interests of the people of the state.

Atkins vs. Kansas, 191 U. S., 223.

ARGUMENT.

I.

Liberty of Contract.

The authority of the legislature to reasonably limit and regulate the right to make contracts is pretty well settled by the decisions of this court, and there would seem to be no necessity for extended argument on this point. In our opinion no right or liberty of contract is really involved in this legislation, and particularly under the circumstances of the case at bar.

II.

Trial by Jury.

It is obvious that one of the main purposes of a compensation law is to avoid so far as possible the delay and expense incident to ordinary court proceedings for the recovery of damages for personal injuries. It has, therefore, seemed wise to the legislature to include in the compensation law under consideration provision for the arbitration of the differences which might arise between employer and employee.

Where the legislature expressly authorizes the submission of disputes to arbitration by the agreement of the parties, if they so elect, it is difficult to see how this statutory authority should be held violative of the fundamental law.

The right of the legislature to *compel* the reference to arbitrators of such questions would be a question of more serious difficulty, but undoubtedly the right to a jury trial may be waived. A settlement of disputes by arbitration is expressly permitted by our statute. As will appear from the cases mentioned in the brief, statutes of this character have repeatedly been before the courts and these courts have uniformly held that compensation legislation was a proper exercise of police power and that it did not infringe the constitutional

provision granting the right of trial by jury as heretofore enjoyed. See statement in

State vs. Clausen, 65 Wash., 165, at 209.

We believe that ultimately compensation acts in a compulsory form will be sustained by the courts as a legitimate exercise of police power, and that the courts will construe that section of our bill of rights guaranteeing trial by jury as heretofore enjoyed with reference to the sovereign exercise of the police power of the state as required by modern industrial and social conditions.

If the law is a progressive thing and may be made to fit modern industrial and social conditions, and if questions of public health, safety and general welfare are not to be limited to those which were familiar at the time the constitutional limitations were imposed, and if there are no vested rights in the rules of the common law, and if old defenses may be abolished (all of which the courts now uniformly hold), we seriously doubt that the legislature may not in the exercise of the sovereign police power of the state withdraw certain cases from that class in which at common law a jury trial was awarded, and in the interest of the whole people place them within that class in which a more summary proceedings is authorized for the general good. If the declarations of the legislature of the state of Washington in the preamble of its workmen's compensation law were justified when it said that the whole subject was withdrawn from private controversy, and the legislature thus indicates that in its opinion such a new system of procedure with reference to industral accidents is "put forth in aid of what is held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare" (*Noble vs. Haskell*, 219 U. S., 104), can the court say at one and the same time that such legislation is due process of law, but that it amounts to an unconstitutional invasion of the fundamental right of trial by jury. May it not be said, as in the Noble case, that "there are more powerful considerations on the other side"? See, also,

Camfield vs. U. S., 167 U. S., 518.

The Federal Employes' Liability and Workmen's Compensation Commission, in making its report to the president of the United States on February 12, 1912, said:

"There is no doubt that under the development of the negligence law the present system has become intolerable and entirely fails in its purpose in the greater number of cases of compensating the injured employe or administering justice in practice or according to any reasonable theory. This negligence basis for compensating industrial injuries has not only been tried and proved a failure in the United States, but it has proved to be a great factor in widening the breach between employers and employes, creating hardships on both sides, with resulting bitterness. This hardship has been spread through the wide area involved in the industrial and constructive undertakings, and has consequently affected an enormous proportion of our citizens." (Vol. 1, Senate Document 338, p. 88.)

In the rapidly growing literature on the subject of compensation for industrial accidents in this country this sentiment is invariably expressed. The inadequacy of the common law of tort to meet modern industrial conditions is universally recognized. The development of the common law of negligence has utterly failed to keep pace with the progress of industry and transportation and the new economic conditions resulting therefrom.

In this connection see strong statement by Mr. Chief Justice Winslow of the supreme court of Wisconsin in the case of *Driscoll vs. Allis-Chalmers Co.*, 144 Wis., 451, at 468.

As we have already indicated, every American court which has thus far been called upon to pass upon an elective compensation law has sustained the law as a legitimate exercise of the police power of the state. The compensation principle has already become a fixed principle of American law. The compensation system has unquestionably passed the experimental stage and has come to stay. It has been adopted in one form or another by thirty-one states of the Union, and by two of her territories.

We respectfully submit the foregoing argument confidently expecting this court to decide the question presented in this case in accordance with the enlightened opinion of mankind,

and we seriously and respectfully contend that no sufficient reason has been urged by appellant and that none exists which justifies the declaration of this court that the statute now under consideration is unconstitutonal for any reason whatsoever.

Respectfully submitted,

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